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GENERAL COMMITTEES

Public Bill Committee

TERRORISM PREVENTION AND INVESTIGATION MEASURES BILL

WRITTEN EVIDENCE

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Memorandum submitted by The Newspaper Society (TPIM 02)

TERRORISM PREVENTION AND INVESTIGATION MEASURES BILL

The Newspaper Society (NS) represents Britain's regional and local media. As well as 1,200 regional and local, daily and weekly titles, the regional press offers over 400 niche/ultra local titles, 1,400 websites, 26 radio stations and two television stations. It delivers local news and information to 38 million print readers a week and 34 million web users a month.

The media is integral to the wider application of the open justice principle, as its journalists attend and report court proceedings to the wider public and help provide public oversight of the criminal justice system. This aspect of the Bill is therefore of particular interest.

The Terrorism Prevention and Investigation Measures Bill contains specific provisions in Schedule 4 of direct relevance to this role. We note the helpful inclusion of paragraph 5 that nothing in paragraphs 2 to 4 of in the rules of court made under them should require the relevant court to act in a manner inconsistent with Article 6 of the Human Rights Convention within the meaning of the *Human Rights Act 1998*. Whilst there may be valid reasons for an anonymity order to prevent the identification of an individual concerned in criminal proceedings, the courts also recognise that there may be strong public interest reasons against the imposition of such orders or for their variation or lifting. Existing statutes and established legal precedent provide some safeguards to prevent unjustified reporting restrictions being imposed upon the identification of those concerned in criminal proceedings, with regard to the individual circumstances of any particular case. Therefore care must be taken to avoid the creation of new rules of court and new forms of anonymity orders, or other restrictions upon the publication of identifying information, in respect of TPIM proceedings and appeals, which might result in unnecessary and unjustified restrictions upon the right of freedom of expression. It is important that no new powers to impose new forms of anonymity order are created without close scrutiny and full debate.

Unfortunately, the Bill allows these powers to be created by rules of court and imposes no requirement for statutory consultation of the media on the anonymity orders provisions, including the grounds and scope of such orders, or the procedures by which the media might make an application against the making of such orders, or their variation or lifting.

We suggest that the Bill should require wider consultation upon any powers and procedures relating to anonymity orders, which would help ensure prior consultation of media organisations. Their specialist legal advisers would be able to identify potential issues of concern and help to avoid the creation of new problems by legislation intended to reform the law in this area. We would also welcome assurances that, irrespective of the Bill's current consultation provisions, the media will be consulted on any proposals under consideration by the Lord Chancellor, Secretary of State and Lord Chief Justice.

In any event, the Home Office and Ministry of Justice might find it useful to hold discussions with media organisations on why such new powers are necessary, what limits would be imposed upon their use and what provisions must be made for applications and hearings on the variation, lifting or appeal of anonymity orders by the media. Such consultation and discussion on both legislation and procedure could help avoid undue prohibitions and restrictions, unnecessary legal procedural complications or satellite litigation which could otherwise arise.

June 2011

Memorandum submitted by The Equality and Human Rights Commission (TPIM 03)

KEY POINTS

- The Equality and Human Rights Commission (the Commission) welcomes attempts to create a more proportionate regime than control orders.
- However, we consider that as a whole the Terrorism Prevention and Investigation Measures (TPIMs) regime lacks sufficient safeguards to adequately protect the right to liberty and the right to a fair trial as guaranteed by the European Convention on Human Rights (the Convention).
- The Commission believes, as a matter of principle, restrictions on individual liberty should occur on the basis of what someone has done, not what they are suspected of doing and that those

suspected of terrorist offences should be prosecuted. We consider the Bill departs from this principle and therefore are opposed to the TPIMs regime.

- The Commission suggests that further consideration is required to strengthen safeguards that would adequately protect Convention rights. In particular, the Commission would advise that a TPIMs order should be made by a court, and that the Director of Public Prosecutions should be involved in the process.

THE COMMISSION'S POSITION

The Commission welcomes the opportunity to comment on the Terrorism Prevention and Investigation Measures Bill. As the statutory body with duties to promote, enforce and monitor the effectiveness of equality and human rights enactments, the Commission aims to ensure legislation is compatible with the *Human Rights Act 1998* and international human rights standards.¹

In September 2010, the Commission provided evidence to the government's review of counter-terrorism and security powers and also gave advice on compliance with the UK's human rights obligations.² Our advice on the *Terrorism Prevention and Investigation Measures Bill* incorporates and builds on these arguments.

The Commission recognises the duty on governments to protect public safety and accepts that circumstances might arise where specific measures are required to address the threat to public safety.

The Commission welcomes attempts to replace control orders with a more proportionate regime. We particularly support the following aspects of TPIMs, which are likely to be more compliant with Convention rights:

- the higher threshold for the imposition of TPIMs;
- the requirement for ongoing review of necessity;
- the limit in duration of a TPIM and the requirement to consult with the police; and
- the restrictions on what measures may be imposed.

However, the Commission is concerned that overall the proposed TPIMs regime may still fail to comply with Convention rights, in particular the right to liberty and security (Article 5), the right to a fair trial (Article 6), the right to respect for private and family life (Article 8), freedom of expression (Article 10) and prohibition of discrimination (Article 14).³

JUDICIAL SAFEGUARDS

The Commission is concerned that various aspects of Convention compliance are claimed to be met through judicial interpretation or reading down of the legislation, rather than appearing on the face of the legislation. Whilst there is a requirement on the judiciary to read legislation in accordance with Section 3 of the *Human Rights Act 1998*, the Commission considers that legislation should aim to provide important safeguards without the need for judicial interpretation. In particular, the Commission is concerned that provisions in relation to appeal rights and secret evidence will require judicial interpretation to ensure Convention compliance.

In addition, the Commission considers the powers to review the decision to impose a TPIM by the judiciary are inadequate, as the decision to impose a TPIM still lies with the Home Secretary and is only subject to review by the courts on the basis of judicial review. The decision can only be overturned if the courts consider the Home Secretary's decision to be "flawed". This is contrary to the recommendations of the government's counter terrorism review and of Lord Macdonald who considered that the order should only be available on application to the High Court.⁴

The Commission would suggest that the decision to impose a TPIM should be a matter for the judiciary, not the executive, with provision for the granting of emergency orders by the Home Secretary where absolutely necessary, such as to prevent a real and immediate act of terrorism

¹ Sections 8 and 9, *Equality Act 2006*.

² EHRC submission to the review of counter-terrorism and security powers, September 2010: <http://www.equalityhumanrights.com/legal-and-policy/consultation-responses/ehrc-submission-review-of-counter-terrorism-and-security-powers/>

³ European Convention on Human Rights: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

⁴ Review of counter-terrorism and security powers, January 2011: <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>

SECRET EVIDENCE

The Commission considers that proposals on secret evidence need to be strengthened to ensure they are compliant with the right to a fair trial, as guaranteed by Article 6 of the Convention. We would suggest that provisions that ensure a person subject to an order has sufficient information to understand the case against them should appear on the face of the Bill.

The ruling in *Secretary of State for the Home Department v AF* no 3 confirmed that the fair trial procedural guarantees under Article 6 require that the person subject to a control order must have sufficient information about the allegations against them to be able to effectively instruct their special advocate.⁵

The joint committee on human rights also considered that the secret evidence process “gives rise to a serious inequality of arms” and “creates the risk of serious miscarriages of justice.”⁶

INVESTIGATION ELEMENT

The Commission remains concerned that TPIMs represent a departure from the normal criminal investigative and prosecutorial process.

In particular, we note Lord Macdonald’s recommendation that that an order should only be made where, in the view of the Director of Public Prosecutions, an investigation of the individual is justified. This would enhance the investigative element of TPIMs, bringing them closer to criminal justice processes.

Whilst the Commission welcomes the requirement to consult the police and report on the progress on investigation, we consider that these provisions fall far short of the recommendations of Lord Macdonald. They fail to provide sufficient guarantees as indicated above to justify the TPIMs regime or bring it closer to normal criminal justice processes.

June 2011

Memorandum submitted by Liberty (TPIM 04)

INTRODUCTION

1. Control orders are the most controversial legislative legacy of the War on Terror: a system of preventative administrative detention, controlled by the Secret Services and the Home Office, which allows the most draconian sorts of punishments and restrictions to be imposed on individuals on an indefinite basis. It is a system which is entirely separate from the criminal justice system—indeed there is no need for those subjected to it to be arrested, charged, let alone tried.

2. It has widely been accepted that, barring a concession to internal relocation (necessitated by a House of Lords ruling in *SSHD v AP* in June 2010) and a shorter overnight curfew, the TPIM regime essentially mirrors the control order system in all of its most offensive elements including:

- abrogation of the constitutional safeguards which protect the right to a fair trial, in particular the process will continue to be executive led, with judicial interventions remaining weak and shrouded with secrecy;
- creation of an impediment to prosecution of those genuinely involved in terrorist activity who are tipped off and then prevented from doing the very things which would allow evidence to be gathered;
- imposition of punitive and potentially unending restrictions on individuals in the absence of criminal due process;
- furtherance of a system which is as unsafe as it is unfair ruining the lives of the innocent and allowing potentially dangerous people to evade prosecution; and
- retention of a system which creates huge costs liabilities at a time of financial strife.

3. The desire to place restrictions on those suspected of planning dangerous activities is understandable. And it is not the placing of restrictions on those suspected of terrorism that is the civil liberties problem. The principal civil liberty objection to control orders is that these restrictions are imposed entirely separately from the criminal justice system. Restrictions, which can last indefinitely, are imposed by the Executive without even arrest or police interview and with seemingly no desire to pursue eventual prosecution.

⁵ *Secretary of State for the Home Department v AF and another* [2009] UKHL 28

⁶ Joint committee on human rights—*Annual renewal of control orders legislation 2010* (Sixteenth Report).

Indeed, the control order regime exists so separately from the criminal justice system, that no-one who has been placed under a control order has ever subsequently been prosecuted for a terrorism offence.

4. While this is unsatisfactory it is hardly surprising. As the former DPP and independent overseer of the Counter-Terror Review, Lord MacDonal, has observed the Security Services have protective rather than prosecutorial instincts. This Bill which continues the system of Executive imposed and controlled preventative restrictions is not going to make eventual prosecution any more likely.

5. There is no reason why temporary restrictions on liberty for specific criminal justice purposes cannot be imposed on suspects where reasonable suspicion exists but where the evidence available is as yet insufficient to allow charges to be laid. Indeed, traditionally, within the criminal justice system, restrictions on a person's movements, communication etc are justified in three different circumstances—in the form of bail conditions pending prosecution, as a form of community punishment following conviction or as a licence condition following release from imprisonment. Crucially, all of these situations fall squarely within the criminal justice system—either pre or post prosecution.

6. There is however currently a statutory bar on pre-charge bail in terrorism related cases. Liberty sees no reason why restrictions placed on those suspected of terrorism could not be brought within the criminal justice system by either lifting the statutory bar or amending the law so that the prohibition could be lifted in individual cases on application to the High Court. Changing the law in either of these ways would mean that where a criminal investigation is underway but there is currently insufficient evidence for charge, police, in consultation with the Security Services, could impose conditions on terrorist suspects, for criminal justice purposes, while further evidence is gathered through targeted surveillance. This would encourage the Security Services to work with police and prosecutors to ensure that criminal investigations are underway before proportionate and purpose-specific restrictions could be imposed. It would also mean that secret court processes could be abandoned, restoring British justice standards and preventing the embarrassing and expensive defensive litigation which will almost certainly continue if control orders are effectively retained. Imposing pre-charge restrictions through the police bail model is far preferable to the mechanism proposed in the TPIM Bill:

- As a matter of principle, the precise limits on a person's liberty should be a matter for independent law enforcement professionals rather than a politician (one of the most offensive features of control orders).
- If we are serious about ending the parallel spook/ Home Office quasi-judicial system and bringing suspects into the criminal justice system wherever possible, we need firm legal drivers to make this happen. A Home Secretary Order plus platitudes about seeking prosecution wherever possible will not bring these parallel systems together and is no real improvement on control orders (which already have a theoretical requirements for constant prosecution case review).
- Further, a civil order that isn't linked to normal criminal bail will allow the continuance of special secret courts and the resulting injustices. Allowing for police bail in terror cases will mean there will be no need for these special devices. The courts will allow reasonable criminal bail conditions for as long as is necessary as long as it can be shown that a criminal investigation is ongoing and that the conditions are necessary for the normal range of purposes.

7. The amendments suggested below would create a system which allowed for police bail in terror cases on a case by case basis. Crucially, under these suggested amendments, a role would be served for the Secretary of State—to lift the prohibition on bail individual cases—so that co-operation between the Agencies, police and Home Office would be institutionally mandated.

8. Failing any significant amendment to the mechanism for imposing pre-charge restrictions, such is our objection to the prospect of *permanent* legislation replicating the worst excesses of punishment without trial under the control order regime, Liberty believes, with huge regret, that it would be better for the current odious but temporary control order regime to remain in place, than for the TPIM Bill to pass in its current form.

AMENDMENT 1: LIFTING THE PROHIBITION ON BAIL IN INDIVIDUAL CASES

Page 1, line 5 leave out clause 2 and insert—

“2 Imposition of a terrorism prevention and investigation measures notice

- (1) The Secretary of State may apply to the High Court for a terrorism prevention and investigation measures notice (a “TPIM” notice) in relation to an individual if conditions A to C in section 3 are met.
- (2) The High Court may grant a TPIM notice in accordance with section 6.

-
- (3) A TPIM notice is a notice which specifies that a particular individual may be released from police custody on bail with specified terrorism prevention and investigation measures (“TPIMs”) imposed where—
- (a) the individual has been arrested for a terrorism-related offence;
 - (b) the chief officer of the relevant police determines that there is insufficient evidence with which to charge the individual with the offence;
 - (c) there is a need for further investigation of any matter in connection with which the individual was detained; and
 - (d) it appears necessary for TPIMs to be imposed in order to prevent the individual from engaging in any of the activities listed in subsection (4).
- (4) Activities in relation to subsection (3) are—
- (a) failing to surrender to custody;
 - (b) committing an offence while on bail
 - (c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person
 - (d) for that person’s own protection or, if he is a child or young person, for his own welfare or in his own interests.”

EFFECT

This amendment will amend clause 2 so that the Secretary of State will not be able to impose terrorism prevention and investigation measures directly on an individual.

Instead he or she will have the power to apply to the High Court for a TPIMs notice which will only be granted if the conditions in clause 3 are made out (see below). Under this scheme, a TPIMs notice is a notice which specifies that a particular individual may be released from police custody on pre-charge bail with Schedule 1 TPIMs measures attached if a number of circumstances are made out. Namely: the individual has been arrested for a terrorism related offence; the relevant custody officer determines there is insufficient evidence to charge; there is a need for further investigation and it appears necessary to prevent the individual in engaging in particular activity. As regards the latter, the particular activity is (1) to secure that he surrenders to custody; (2) to secure that he does not commit an offence while on bail; (3) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person; (4) to secure his own protection or, if he is a child or a young person, for his own welfare or in his own interests.

Under this scheme then, a TPIMs notice (if granted) would remove the bar on police bail for suspected terror offences in individual cases. An individual to whom a TPIMs notice applies may then be released following arrest with police bail conditions attached—and these would include the TPIMs measures as listed in Schedule 1. Crucially it will be the relevant chief officer of police (and not the Secretary of State) deciding whether to impose bail conditions (including TPIMs measures) and if so which measures to impose for Bail Act purposes.

AMENDMENT 2: NEW CONDITIONS A—C

Clause 3, page 1, line 15 delete “E” and insert “C”

Clause 3, page 1, line 19, delete subclauses (2)—(6) and insert—

- “(2) Condition B is that the Secretary of State is satisfied that the individual is currently subject to an ongoing criminal investigation for a terrorism-related offence.
- (3) Condition C is that the Secretary of State is satisfied that if the individual is, having been arrested, released prior to charge, certain conditions would be necessary and proportionate to ensuring that the suspect in question—
 - (i) surrenders to custody
 - (ii) does not commit an offence while on bail

(iii) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person.

(4) The Secretary of State may apply to the High Court for a TPIMs notice to be granted at any time that he or she is satisfied that Conditions A, B and C are met.

Clause 5, page 3, line 4 delete “C and D” and insert “B and C”

EFFECT

Clause 3 currently relates to the conditions that need to be satisfied before the Secretary of State can impose measures directly on an individual. Amendment 1 (above) amends the role of the SoS so that he/she is able to apply to the High Court, for the prohibition on police bail with conditions to be lifted in individual cases. Accordingly, amendment 2 relates to the conditions that must be satisfied before the SoS can make that application. Under this scheme, Condition A (“that the SoS reasonably believes that that individual is or has been involved in terrorism related activity”) would remain but the other conditions would be replaced with new Conditions B and C listed above. Namely, that the SoS is satisfied that the individual is subject to a criminal investigation for a terrorism-related offence and that the SoS is satisfied that if arrested a released prior to charge, certain conditions would be required to ensure that the suspect—surrenders to custody; does not commit and offence while on bail and does not interfere with witnesses or otherwise obstruct the course of justice.

AMENDMENT 3: WHEN A TPIM NOTICE COMES INTO FORCE

Clause 5(1)(a), page 2, line 43, after “individual” delete “or, if later, at the time specified for the purpose in the notice”.

Clause 5(2), page 3, line 1, after “Secretary of State may” delete “by notice” and replace with “apply to the High Court to”

Clause 5(3)(a), page 3, line 4, after “if” delete the rest of the subclause and insert—“the High Court is satisfied that conditions, A, B and C are met; and”

Clause 5, page 3, line 1, delete subclause(4).

EFFECT

This would mean that a “TPIM notice” can only come into force when it is served on the relevant individual.

It would also mean that for a TPIM notice to be extended beyond one year, the Secretary of State would have to apply to the High Court and the Court would have to be satisfied that the relevant conditions (clause 3 as amended above) have been met.

AMENDMENT 4: COURT SCRUTINY OF IMPOSITION OF TPIM NOTICE

Page 3, line 9 delete “imposition of measures” and insert “TPIM notice application”.

Clause 6, page 3, line 13, delete “for permission to impose measures on the individual” and insert “to grant a TPIM notice”

Clause 6(3), page 3, line 19 delete subclause (b) and insert “to determine whether to grant a TPIM notice.”

Clause 6, page 3, line 35, delete subclause (9)

Clause 6, page 4, line 2, delete “(d) condition D”.

EFFECT

These are consequential amendments which deal with the court process for applying for a TPIMs notice. Under the new suggested scheme, the TPIMs notice itself will not contain restrictive measures but will instead lift the general prohibition on pre-charge bail in individual terrorism-related cases. These amendments make some changes to the current regime for applying for a TPIMs notice to reflect this.

AMENDMENT 5: REMOVAL OF POWER FOR EMERGENCY TPIMs NOTICE

Page 4, line 3, delete clause 7.

EFFECT

This amendment would delete the clause which brings Schedule 2 (the framework for emergency TPIMs notices) into force. Under the new suggested scheme, a TPIMs notice will need to be granted by the High Court and will not be within the Secretary of State's gift. As an application for a TPIMs notice will be able to be made ex parte and both before and after arrest, the power to grant an emergency TPIMs notice is not required.

AMENDMENT 6: REVIEW OF TPIMs NOTICE

Clause 8(1), page 4, line 7, delete subclauses (a) and (b) and insert "grants the application for a TPIMs notice".

Clause 8(5), page 4, line 23, delete "measures" and insert "the TPIMs notice".

Clause 8, page 4, line 27, delete subclass (7) and insert—

"(7) in this section "relevant day" means the day on which the TPIM notice is served on the individual".

Clause 9(5), page 5, line 7, delete subclauses (b) and (c).

Clause 9, page 5, line 13, delete subclass (7).

Clause 9(8), page 5, line 19, after "C" insert full stop and delete "and (d) condition D."

EFFECT

Clauses 8 and 9 deal with the automatic review of a TPIMs notice once it is served. Under this suggested scheme it is intended that this mechanism for automatic review continues. These amendments are merely consequential to earlier amendments to clarify that a TPIMs notice does not contain measures and restrictions.

AMENDMENT 7: CRIMINAL INVESTIGATIONS INTO TERRORISM-RELATED ACTIVITY

Page 5, line 23, clause 10, delete subclass (1) and insert—

"(1) The Secretary of State must consult the chief officer of the appropriate police force about the matter mentioned in subsection (2) before applying for a TPIM notice under section 2.

Clause 10, page 5, line 38, delete subclass (4) and insert -

"(4) If a TPIM notice is granted by the High Court, the Secretary of State must immediately notify the chief officer of the appropriate police force that the TPIM notice has been granted.

(4A) If the individual to which the TPIM notice relates is being detained by police following his arrest, the chief officer must, after being informed of the matters mentioned in subsection (2), notify the appropriate custody officer.

(4B) If the individual to whom the TPIM notice relates is not being detained by police, at the time that the TPIM notice is granted, but is later arrested, the chief constable must inform the appropriate custody officer of the existence of the TPIM notice immediately following the arrest.

(4C) After being informed of the matters mentioned in subsection (4A) or subsection (4B), the appropriate custody officer must notify the individual to whom the TPIM notice relates, of the existence of the TPIM notice and the directions hearing.

(4D) The "appropriate custody officer" means the custody officer who is responsible for the detention of the individual against whom a TPIM notice has been granted."

EFFECT

Under these amendments the SoS will still remain under a duty to consult the CC before applying for a TPIMs notice. These amendments additionally provide that a chief constable of the appropriate police force must be immediately notified by the SoS when a TPIMs notice is granted against an individual. If the individual has already been arrested and is being detained by police, the chief constable must notify the relevant custody officer who must then inform the individual of the existence of the TPIMs notice. If the individual has not yet been arrested, but is later arrested and detained, the chief constable is required to notify the custody officer of the existence of the TPIMs notice immediately following arrest. The custody officer is then required to inform the individual.

AMENDMENT 8: GRANTING OF BAIL WITH TPIMs IMPOSED

Clause 10, page 6, line 40, at the end insert—

“10A Granting of bail with terrorism prevention and investigation measures imposed

- (1) Where an individual who is subject to a TPIMs notice has been arrested for a terrorism-related offence and is being detained by police, the chief officer of the appropriate police force may grant bail in accordance with section 41(10) of the *Terrorism Act 2000*, subject to the provisions of this section and section 3B of the *Bail Act 1976*.
- (2) When granting bail under subsection (1), the chief officer of the appropriate police force may impose specified terrorism prevention and investigation measures on an individual if the conditions in subsection (3) are met.
- (3) The conditions are—
 - (a) the individual has been arrested for a terrorism-related offence;
 - (b) the relevant custody officer determines that there is insufficient evidence with which to charge the individual with the offence;
 - (c) there is a need for further investigation of any matter in connection with which he was detained; and
 - (d) it appears necessary for TPIMs to be imposed in order to prevent the individual from engaging in any of the activities listed in subsection (4).
- (4) Activities in relation to subsection (3) are—
 - (a) failing to surrender to custody;
 - (b) committing an offence while on bail
 - (c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person
 - (d) for that person’s own protection or, if he is a child or young person, for his own welfare or in his own interests.”
- (5) When imposing terrorism prevention and investigation measures under subsection (2) a chief officer must issue the individual concerned with a terrorism prevention and investigation measures certificate (“TPIMs certificate”) containing the measures imposed.
- (6) In this Act “terrorism prevention and investigation measures” means requirements, restrictions and other provision which may be made in relation to an individual by virtue of Schedule 1 (terrorism prevention and investigation measures).
- (7) In this section and Part 1 of Schedule 1 “specified” means specified in the TPIM certificate.

Clause 11, page 5, line 44 leave out “C and D” and insert “A, B and C”

EFFECT

These amendments create a mechanism for a chief constable to grant bail with conditions for an individual who has been arrested for a terror-related offence where a TPIMs notice is in force. Bail will be granted in accordance with provisions in the *Bail Act 1976* but subject to the provisions of this Act. The conditions that need to be satisfied before police bail with conditions can be granted are set out in suggested subsection (3) and (4). If these conditions are met, and a TPIM notice is in force, a chief constable will be able to impose terrorism prevention and investigation measures listed in Schedule 1 by issuing a “TPIMs certificate”.

Amendment 15 (below) contains the consequential amendments to the *Terrorism Act 2000* and the *Bail Act 1976* that would be required in order for the bar on police bail in individual cases to be lifted.

AMENDMENT 9: VARIATION AND DISCHARGE OF MEASURES

Page 7, line 1 delete “notices” and insert “certificate”

Clause 12(1), page 7, line 3, delete “The Secretary of State” and insert “A chief officer of police”

Clause 12(1), page 7, line 4, delete “notice” and insert “certificate”

Clause 12(1), page 7, line 7, delete subclause (c) and insert “the chief officer of police reasonably considers that the variation is necessary for the purposes set out in section 10A(3)(e).”

Clause 12(2), page 7, line 10, delete “notice” and insert “certificate”

Clause 12(2), page 7, line 11, delete “Secretary of State for the” and insert “High Court for the discharge or”

Clause 12(3), page 7, line 12, delete “Secretary of State” and insert “High Court”.

Clause 12, page 7, line 17, leave out subclauses (6) and (7).

EFFECT

As drafted clause 12 governs the variation of TPIMs measures by the Secretary of State. The amendments are consequential on earlier amendments which remove the power of the Secretary of State to impose measures and replace this with the power of a chief constable of police—through a “TPIMs certificate” to impose measures on individuals for whom the prohibition on pre-charge bail has been lifted. These amendments therefore allow a chief officer of police to vary the measures.

The amendments also give the individual the right to apply to the High Court for the measures to be varied. This follows the current procedure for those placed on police bail in non terror cases, who are able to apply to the Magistrates Court to have their bail conditions varied.

AMENDMENT 10: REMOVAL OF UNNECESSARY CLAUSES

Page 7, line 28, delete clause 13.

Page 8, line 18, delete clause 14.

Page 9, line 4, delete clause 15.

Page 9, line 27, delete clause 16.

Page 10, line 38, delete clause 17.

Page 11, line 11, delete clause 18.

EFFECT

This amendment deletes the clauses which deal with arrangements for the SoS to revoke, extend and revive a TPIMs notice, provisions relating “TPIMs proceedings” and provisions related appeals. Deletion of clause 18 would also have the effect of removing Schedule 4 which sets out the framework for TPIMs proceedings. These provisions would not be necessary under the suggested scheme. If previous suggested amendments are adopted, there would be no need for TPIMs proceedings or special advocates etc. Instead, someone made subject to TPIMs bail conditions would be able to appeal to the High Court to vary or discharge those conditions.

AMENDMENT 11

Clause 19(2), page 11, line 28, delete subclause (a) and insert—

“(a) to apply to the High Court for a TPIMs notice under section 2;”

Clause 19(2), page 11, line 30 delete subclauses (c), (d) and (e).

EFFECT

These amendments are consequential to amendments 1 and 10

AMENDMENT 12

Clause 21(1), page 12, line 15, delete subclauses (a) and (b) and insert—

“(a) a TPIM notice is in force in relation to an individual;

(b) the individual has been arrested and released without charge on police bail with terrorism prevention and investigation measures attached;

(c) the individual contravenes, without reasonable excuse, measures specified in the TPIMs certificate.”

EFFECT

This amendment is consequential to amendments 1 and 10.

AMENDMENT 13

Page 12, line 32, delete clause 22.

Page 12, line 34, delete clause 23.

Page 13, line 2, delete clause 24.

Page 14, line 1, delete clause 25.

EFFECT

This would delete clauses 22 and 23 which bring Schedules 5 and 6 into force. Schedules 5 and 6, set up a mechanism to allow for powers of entry, search, seizure and retention and the taking and retention of fingerprints and DNA in relation to those subject to a TPIMs notice. As drafted, the Bill requires a separate system for these powers because those subject to a TPIMs notice may never have been arrested. Under the suggested scheme, before individuals have TPIMs restrictions imposed they will have been arrested and released on police bail. This means that the police will have already had the opportunity to undertake necessary search and seizure and the taking of biometrics. Deletion of clauses 24 and 25 are consequential to the new scheme.

AMENDMENT 14: SCHEDULE 1

Schedule 1, paragraph 1(1), page 16, line 7, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(2), page 16, line 12, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(3), page 16, line 23, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(4), page 16, line 31, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(5), page 16, line 33, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(6), page 16, line 35, delete “Secretary of State, the Secretary of State” and replace with “chief officer of the appropriate police force, the chief officer of the appropriate police force”.

Schedule 1, paragraph 1(7), page 17, line 3, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(8), page 17, line 5, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(8) page 17, line 8, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(9), page 17, line 9, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 1(9), page 17, line 11, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 2(1), page 17, line 14, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 2(3), page 17, line 22, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 2(3)(a), page 17, line 25, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 2(3)(b), page 17, line 26, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 2(3)(c), page 17, line 29, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 3(1), page 18, line 1, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 3(2), page 18, line 5, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 3(2)(a), page 18, line 8, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 3(2)(b), page 18, line 10, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 4(1), page 18, line 13, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 5(1), page 18, line 26, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 5(2), page 18, line 28, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 5(2)(a), page 18, line 31, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 5(2)(d), page 18, line 38, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 5(3), page 18, line 41, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 6(1), page 19, line 33, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 6(2), page 19, line 38, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 6(2)(a), page 19, line 42, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 6(2)(b), page 19, line 43, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 6(2)(d), page 20, line 1, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 7(1), page 20, line 15, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 7(2), page 20, line 21, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 7(2)(a), page 20, line 23, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 7(3), page 20, line 26, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 8(1), page 21, line 16, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 8(2), page 21, line 18, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 8(2)(a), page 21, line 22, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 8(2)(b), page 21, line 23, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 9(1), page 21, line 34, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 9(2), page 21, line 36, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 9(2)(a), page 21, line 39, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 9(2)(b), page 21, line 42, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 10(1), page 22, line 5, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 10(1) page 22, line 6, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 11, page 22, line 11, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 11, page 22, line 12, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 12(1), page 22, line 15, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

Schedule 1, paragraph 12(2), page 22, line 19, delete “Secretary of State” and replace with “chief officer of the appropriate police force”

EFFECT

As drafted, the Bill will allow the Secretary of State to impose directly a range of highly restrictive measures on an individual, including—an overnight residence measure, travel measure, exclusion measure, movement directions, financial services measure, property measure, electronic communication device measure, association measure, work or studies measure, reporting measure, photography measure, monitoring measure. These amendments would mean that instead of being imposed by the SoS, these measures could instead be imposed by a chief officer of police under a police bail regime.

Further consequential amendments would be required to be made to Schedule 1 (Part 2) and Schedule 3.

AMENDMENT 15: SCHEDULE 7

Clause 2, page 1, line 14, insert—

“2A Terrorism Act 2000

(1) In section 41 of the *Terrorism Act 2000*, after subsection (9) insert—

“(10) Where for any reason the continued detention of a person arrested under subsection (1) is no longer authorised, a chief officer of police may release the person on police bail, but only if –

- (a) he reasonably believes there is a need for further investigation of any matter in connection with which the individual was detained; and
- (b) he has been notified by the Secretary of State that a TPIM notice has been granted and is in force in relation to the individual.”

2B Bail Act 1976

(1) After section 3A of the *Bail Act 1976*, insert—

“(3B) Police bail in relation to terrorism-related offences

(1) Section 3 of this Act applies in relation to bail granted by a chief officer of police under section 41(10) of the *Terrorism Act 2000* subject to the following modifications.

-
- (2) Any reference in section 3 to “custody officer” shall be substituted by “chief officer of police”.
- (3) Subsection (6) does not authorise the imposition of a requirement to reside in a bail hostel or any requirement under [paragraph (d) or (e)].
- (4) Subsections [(6ZAA),] (6ZA) [and (6A) to (6F)] shall be omitted.
- (5) Terrorism Prevention and Investigation Measures as contained in Schedule 1 of the *Terrorism Prevention and Investigation Measures Act 2011* may be imposed by a chief officer of police as bail conditions.
- (6) Where a chief officer of police grants bail to a person, no conditions shall be imposed under this Act unless it appears to the constable that it is necessary to do so—
- (a) for the purpose of preventing that person from failing to surrender to custody; or
 - (b) for the purpose of preventing that person from committing an offence while on bail; or
 - (c) for the purpose of preventing that person from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person; [or
 - (d) for that person’s own protection or, if he is a child or young person, for his own welfare or in his own interests.
- (7) For subsection 8 substitute—
- “(8) Where a chief officer of police has granted bail under section 41(10) of the *Terrorism Act 2000* and imposed terrorism prevention and investigation measures in accordance with section 10 of the *Terrorism Prevention and Investigation Act 2011*, the High Court may on application by or on behalf of the person to whom bail was granted vary or discharge the conditions of bail contained in a Terrorism Prevention and Investigation Measures certificate (“TPIMs certificate”) in accordance with this subsection.
- (8A) In determining whether or not to vary or discharge the conditions of bail as contained in the TPIMs certificate, the High Court must be satisfied, in relation to each measure or restriction, that it is necessary –
- (a) to secure that he surrenders to custody;
 - (b) to secure that he does not commit an offence while on bail;
 - (c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person; and
 - (d) to secure his own protection or, if he is a child or a young person, for his own welfare or in his own interests”.

EFFECT

These amendments amend the *Terrorism Act 2000* and the *Bail Act 1976* to provide for police bail to be granted in terror cases where there is a “TPIMS notice” in place.

The amendment also amends the *Bail Act 1976* to provide that an individual who is released on police bail for a terror-related offence is able to apply to the High Court to vary or discharge his conditions. The High Court will need to be satisfied that the conditions (including the TPIMs measures) are necessary for Bail Act purposes in order to uphold them. Currently, when police bail with conditions is granted in other (non-terror related) cases, the individual can apply to the Magistrates court to vary the conditions. In recognition of the seriousness of terrorism, we have suggested that this application should be made to the High Court and dealt with by a High Court judge.

June 2011

Memorandum submitted by the Metropolitan Police (TPIM 05)

On Tuesday 21 June 2011 Deputy Assistant Commissioner Stuart Osborne appeared before your committee and was posed two questions which he did not feel equipped to answer without further research and consultation.

The first question related to the cost of twenty-four hour surveillance against an individual.

Enquiries have been made with the MPS Surveillance lead, who advises that such information is not normally released into the public domain for reasons of operational security.

The second question related to whether Mr Osborne was aware of the whereabouts of the seven individuals subject to control orders who have absconded.

Consideration has been given, and it is felt that it is inappropriate to release any information publicly for operational reasons.

July 2011
