



***Terrorism Prevention and Investigation Measures Bill* Committee Stage Report**

Bill 211 2010-12

RESEARCH PAPER 11/62 24 August 2011

This is a report on the House of Commons Committee Stage of the *Terrorism Prevention and Investigation Measures Bill*. It complements Research Paper 11/46 prepared for the Commons Second Reading. Report Stage and Third Reading are scheduled for 5 September 2011.

Significant areas of debate at Committee Stage included: the lack of a legal definition for overnight residence requirements that could be imposed on suspects; the fact that the Home Secretary would no longer be able to geographically relocate terror suspects; proposals to allow suspects access to a mobile phone and computer. Some Members expressed a particular worry about the inability to renew measures imposed on suspects after two years, unless there was evidence of new terrorism-related activity.

Only a small series of Government amendments, which were mostly described as drafting or technical amendments, were made in Committee. One of these extended certain provisions (relating to devolved matters) to Scotland with the agreement of the Scottish Government.

Alexander Horne

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Research Paper 11/62

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Summary

The *Terrorism Prevention and Investigation Measures Bill* was introduced on 23 May 2011. It would abolish the current control order regime, commenced under the *Prevention of Terrorism Act 2005*, and replace it with new Terrorism Prevention and Investigation Measures (referred to throughout as TPIMs). The Bill had its Second Reading on 7 June. It had 10 sittings in Public Bill Committee, beginning on 21 June 2011 and ending on 5 July 2011. Report Stage and Third Reading are scheduled for 5 September 2011.

At Second Reading, debate ranged widely, encompassing civil liberties concerns, security considerations and the utility of the measures being introduced. In Committee, however, much of the focus was on whether requirements placed on suspects were sufficiently stringent to guarantee public protection. The Opposition Members expressed concerns about the effect of ending Ministerial discretion in a number of areas. The debate was concentrated on issues such as the ability of the authorities to geographically relocate terror suspects; the definition of overnight residence requirements (and how they differed from curfews imposed under the control order regime); the ability of suspects to access mobile telephones and computers; the absolute two year limit for TPIMs notices (in the absence of new terrorism-related activity); and, methods to review the operation of the legislation. There was also considerable debate about resources that would be made available to the police and security and intelligence services to enable increased surveillance of terror suspects.

Some disquiet was expressed at the absence of a sunset clause or other method of annual renewal. In the event, only a small series of Government amendments, which were mostly described as drafting or technical amendments were made in Committee. Some of the most significant amendments related to the provisions on territorial extent, insofar as certain provisions that related to devolved matters (such as powers of entry, search and seizure and retention of fingerprints and samples, contained in Schedules 5 and 6) were extended to Scotland following the agreement of the Scottish Government.

A reference to the Channel Islands was removed from the legislation, after they indicated that they would wish to produce any required legislation themselves, rather than having the Act extended to them by Order in Council.

Substantive amendments were also made to Clause 26 (which relates to the offences which could be committed under the provisions of the Act). The Minister noted that this was to cure a possible ambiguity in the legislation.

1 Introduction

The *Terrorism Prevention and Investigation Measures Bill*, introduced on 23 May 2011, contains 27 clauses and eight schedules. It would abolish the current control order regime, commenced under the *Prevention of Terrorism Act 2005*, and replace it with new Terrorism Prevention and Investigation Measures (referred to throughout as TPIMs). The reforms were heralded by the Government's *Review of Counter-Terrorism and Security Powers*, published in January 2011.

The new measures are designed to restrict the behaviour of terror suspects who, the Government argues, cannot be prosecuted or deported. They have already been dubbed "control orders lite" by some critics. This is because those individuals subject to TPIMs will still fall outside the criminal justice system and may not be presented with all the evidence against them, despite being subject to sanctions such as overnight residence requirements, travel bans and electronic tagging.

Second Reading of the Bill took place on 7 June 2011. It had 10 sittings in Public Bill Committee, beginning on 21 June 2011 and ending on 5 July 2011. Oral evidence was taken on Tuesday 21 June 2011. Witnesses included representatives from the Association of Chief Police Officers, JUSTICE, Liberty, and the Helen Bamber Foundation. Oral evidence was also taken from Keir Starmer QC, Lord Howard of Lympne QC, Lord Carlile of Berriew QC, Lord Macdonald of River Glaven QC, Angus McCullough QC and Judith Farbey QC.

Detailed information on the provisions in the Bill and the background to them can be found in [Library Research Paper 11/46](#) which was prepared for the Second Reading. Further material and links to the proceedings on the Bill (including written and oral evidence from witnesses) can be found on the [Terrorism Prevention and Investigation Measures Bill Page](#) on the Parliament website and, for Members and their staff, on the [Bill Gateway](#) pages.

An [illustrative version](#) of the Bill, showing changes made in Public Bill Committee in the House of Commons is also available from the Bill page.

2 Second Reading Debate

The Second Reading debate took place on 7 June 2011.¹ The Home Secretary, Theresa May, said that there were a small number of people who pose a real threat, but who could not be prosecuted or deported. Although prosecution was always the priority, where prosecution or deportation were not possible other measures were necessary. She argued that the current control order regime was "neither perfect, nor entirely effective" and that the Bill would provide for appropriate, proportionate and effective powers to deal with individuals involved in terrorist-related activities.² She highlighted some of the additional safeguards contained in the Bill, namely that: measures that could be imposed would be specified in the Bill; overnight residence requirements would be relaxed; and the standard of proof required to impose measures would be changed (from reasonable suspicion to reasonable belief).

The Home Secretary stressed that the Government was introducing a "new regime" and that the final part of the Government's response was to combine the new preventative measures with increased covert intelligence resources. Theresa May promised "significantly increased resources for the police and Security Services, over and above those agreed in the spending review, to help with investigation and prosecution."³

¹ HC Deb 7 June 2011, c69-130

² Ibid c70

³ Ibid c73-4

She indicated that she had discussed the new measures with Jonathan Evans, the Director General of the Security Service, who she said had considered that the changes “provide an acceptable balance between the needs of security and those of civil liberties”.⁴ Theresa May also said that the Government was examining the “issue of special advocates and the information available to them, suggesting that in practice, individuals subject to TPIMs “will know the key elements of the case against them, even if it is not possible for them to see the underlying intelligence.”⁵

In response, the Shadow Home Secretary, Yvette Cooper, suggested that for the most part, the Bill was “a confusion and a con”.⁶ She argued that the Bill failed to meet promises that the Conservatives and the Liberal Democrats had made in opposition, since it did not abolish the control order regime, but simply renamed it with a few minor amendments.

Yvette Cooper contended that the proposals would “make it harder for the police and security services to limit the actions of a small number of dangerous people”.⁷ In particular, she said that preventing the relocation of terrorist suspects raised “some significant concern”⁸, noting that the Home Secretary had imposed a control order on a suspect preventing him from entering London and had asked Home Office lawyers to (successfully) defend that order.

She also questioned the decision to restrict individual TPIMs to two years, recalling that control orders could be renewed repeatedly. Finally, the Shadow Home Secretary said that the parliamentary supervision of the legislation was being downgraded, since while control orders had to be approved every year by Parliament, the TPIMs regime would not be subject to annual renewal.

Yvette Cooper concluded by stating that the Opposition had “very serious reservations” about the Bill, and that although it would not vote against the Bill at Second Reading, that it needed “a serious rethink in Committee”.⁹

The Bill provoked extensive debate in the Chamber. Many of those that spoke, such as Julian Huppert (Liberal Democrat), raised issues based on civil liberties and questioned the utility of control orders. David Winnick (Labour) asked why no one subject to a control order had subsequently been charged with a terrorism-related offence.¹⁰ Jeremy Corbyn (Labour) said that there was a major concern about anti-terrorism legislation where information was withheld from the suspect and the special advocate acting on their behalf was not allowed to reveal the nature of the evidence against them.¹¹

A number of Members (such as Patrick Mercer (Conservative), and Dominic Raab (Conservative)) raised the question of intercept evidence¹² and strengthening the ability of the state to bring prosecutions (for example through greater use of plea bargaining). Some Members spoke in favour of a proposal by Lord Macdonald, for a regime where any restrictions were linked to bail and predicated on “the active pursuit of prosecution”.¹³

⁴ Ibid c74
⁵ Ibid c73
⁶ Ibid c74
⁷ Ibid c75
⁸ Ibid c78
⁹ Ibid c80
¹⁰ Ibid c83
¹¹ Ibid c87
¹² Ibid c99
¹³ Ibid c112

In contrast, some Members (for example Paul Goggins (Labour) and Hazel Blears (Labour)) expressed fears that counter-terrorism measures were being watered down. Reservations were expressed about the fact that the Home Secretary would not be able to relocate individuals¹⁴ and on proposals to allow suspects access to a mobile phone and computer.¹⁵ Hazel Blear expressed a particular worry about the inability to renew TPIMs after two years, unless there was evidence of new terrorism-related activity, citing the case of *AM* (2007).¹⁶

The Bill was given a Second Reading without the need for a division.

3 Committee Stage

3.1 Repeal of the Control Order regime

Clause 1 of the Bill would repeal the control order regime, introduced by the *Prevention of Terrorism Act 2005*. There was a substantial debate over this issue. Gerry Sutcliffe said that the Opposition was “upset about the proposals”, that the control order regime was “necessary” and that while the Opposition accepted that changes might be made to the regime, it might have been better to do that by way of amending the 2005 Act.¹⁷ Hazel Blears argued that “control orders are intrusive and in many ways unwelcome, but they are unfortunately necessary if we are to continue to protect the public from those who are determined to do us harm”. She reiterated the contention that the “Government should have brought forward an honest amendment” to the 2005 Act.

She suggested that there were essentially only five changes being made to the 2005 Act: a different name, the raising of the threshold from reasonable suspicion to reasonable belief; the introduction of an absolute two year limit (without evidence of new terrorism-related activity); changes on measures that can be imposed (such as relocation, use of mobile telephones, work and study); and, the fact that the legislation is made permanent (as there is no sunset clause and no review by Parliament).¹⁸ Paul Goggins also echoed the point about amending the 2005 Act.

James Brokenshire, the Parliamentary Under-Secretary of State for the Home Department responded that the Government believed that the Bill charted “a very different direction”. He added that “the reforms that it makes are important, including those on issues of liberty. It forms part of the overall package of measures to deliver security, and it does so in a way which is more focused, more structured and in some ways less intrusive”.¹⁹ The clause was ordered to stand part on division (eight votes to seven).

3.2 Alternatives to TPIMs

Dr Julian Huppert sought to move a large series of amendments. They were designed to replace TPIMs with a form of terrorism police bail (at present there is a bar to prevent police bail in terrorism cases). He described Amendment 118 as the key proposal. The core proposal appeared to tie in with Lord Macdonald’s suggestion for a regime predicated on the active pursuit of a prosecution (see above). Following a debate, the amendment was withdrawn.

¹⁴ Ibid c95

¹⁵ Ibid

¹⁶ Ibid

¹⁷ PBC Deb 23 June 2011 c55-58

¹⁸ PBC Deb 23 June 2011 c71-72

¹⁹ PBC Deb 23 June 2011 c92-3

3.3 Measures which could be imposed under the proposed TPIMs legislation

Clauses 2-4 of the Bill and **Schedule 1** set out the “new regime to protect the public from terrorism”, referred to throughout as TPIMs. Much of the debate in Committee focused on the new restrictions on the measures that could be imposed by the Home Secretary (as compared to the control order regime).

Overnight residence requirements

Gerry Sutcliffe sought to move a series of amendments which would have replaced the overnight residence requirement with a defined curfew of (not more than) 16 hours. He noted the fact that there was no definition of the timeframe for any overnight residence requirement contained on the face of the Bill. Hazel Blears said that the Government’s position on the issue was inconsistent, since it was introducing measures in the *Legal Aid, Sentencing and Punishment of Offenders Bill* to allow for curfews of up to 16 hours and argued that these provisions in respect of antisocial behaviour were “likely to be more draconian than such provisions for terrorism.”²⁰

Paul Goggins argued that the courts had allowed for 16 hour curfews, but the Government now wanted to introduce the concept of “overnight” residence requirements, which he described as “a vague, nebulous definition”.²¹ He went on to discuss the case law around the issue²² and argued that on a reasonable definition of “overnight” the Government was reducing the residence requirement to a period shorter than 16 hours, which would mean “a greater risk and a greater challenge to the police and the Security Service.”²³

In response, James Brokenshire said that the heart of the debate was that the Government wanted individuals subject to measure to be able to “lead as normal a life as is possible, consistent with protecting the public.”²⁴ He noted that a curfew had not been defined by the 2005 Act and suggested that an overnight requirement would be “a requirement to spend at least part or the whole of each night at home”.²⁵

Following additional questioning from Paul Goggins, Mr Brokenshire eventually accepted that ultimately, the timeframe of the order “will be for the courts to determine”.²⁶ Gerry Sutcliffe then sought leave to withdraw the amendment, whilst stating that the Opposition would return to the matter in more detail on Report.²⁷

Residence requirements, relocation and exclusion measures

Hazel Blears sought to move a series of amendments relating to the provisions on residence requirements contained in **Schedule 1** to the Bill. She indicated that these would allow the Home Secretary some discretion about requirements placed on terror suspects. When pressed by Stephen Phillips as to whether this was a way of reintroducing the possibility of a relocation requirement, she responded: “My amendments absolutely seek to reintroduce a relocation provision.”²⁸

Hazel Blears noted that the Bill removed the power of the Home Secretary to require an individual to be relocated from his or her own area, despite the fact that such a requirement

²⁰ PBC 28 June 2011 c123

²¹ PBC 28 June 2011 c 124

²² PBC 28 June 2011 c128

²³ PBC 28 June 2011 c129

²⁴ PBC 28 June 2011 c138

²⁵ PBC 28 June 2011 c138

²⁶ PBC 28 June 2011 c142

²⁷ PBC 28 June 2011 c144

²⁸ PBC 28 June 2011 c146

“has been imposed in nine of the 12 [control] orders that are in existence.”²⁹ She added that in evidence Lord Howard and Lord Carlile had both described the relocation power as “the single most important provision in making sure that the package of measures is sufficient to keep us safe.”³⁰ Hazel Blears also cited evidence from Deputy Assistant Commissioner Osborne that:

The new freedoms that will be given to individuals will significantly increase the challenges that we have to face, and managing those challenges will increase the resources that we need. The degree that we are successful in managing them depends on both the extent of the Bill and the additional resources that we get.³¹

Hazel Blears said Lord Carlile had indicated that “there would be a cost of £11 million to £18 million per suspect who needs 24/7 surveillance”³² and argued that it would be an absolute folly to say that it would be impossible to relocate individuals in any circumstances, no matter how dangerous they were. She supported this argument with reference to the judgment of Mr Justice Simon in the case of *CD*.³³

James Brokenshire replied that even the court judgment referred to the resources and support available to the security services and the police and that there were “different ways in which risk can be mitigated and an individual can be managed”.³⁴

Tom Brake said that “the Coalition Government rightly identified that relocation was one of the most unacceptable measures contained within control orders” and suggested that the residence requirements contained in the Bill, combined with the option of additional surveillance was the right decision³⁵ arguing that surveillance measures would adequately address any additional risk.³⁶

Subsequently, James Brokenshire sought to further define what was envisaged under the provisions of Schedule 1 to the Bill. He said that in certain circumstances, for example where an individual was homeless or did not have a suitable residence, it would be possible to require them to stay in Home Office provided accommodation. Such accommodation would have to be in the individual’s home area or in an area that the individual “had a connection with.” If there were no such area, the area would be one that the Secretary of State considered appropriate.

James Brokenshire noted that there were other provisions in the Bill which would allow further restrictions on suspects, such as excluding them from areas or places where they might meet extremist associates or conduct terrorist related activities; prohibiting their association with individuals of concern.³⁷ He refused to be drawn on the figures on the cost of surveillance suggested by Lord Carlile.

When pressed on a definition of an “agreed locality” for the overnight residence requirement and whether it might be a ward, a borough, a whole city or Greater London, the Minister responded that:

²⁹ PBC 28 June 2011 c146

³⁰ PBC 28 June 2011 c147

³¹ PBC 28 June 2011 c147

³² PBC 28 June 2011 c148

³³ PBC 28 June 2011 c150

³⁴ PBC 28 June 2011 c151

³⁵ PBC 28 June 2011 c154

³⁶ PBC 28 June 2011 c125

³⁷ PBC 28 June 2011 c166

It is ultimately for the courts to decide the relevant locality, taking into account the definition of provisions in schedule 1 [...] The locality is likely to differ depending on whether the area is urban or rural. We will therefore need to assess, on a case by case basis, what is considered appropriate and reasonable in terms of the locality and take those important distinctions into account.³⁸

Hazel Blears argued that the absence of definitions was an issue because it was not clear, for example, whether an exclusion measure could be used to exclude an area as large as Greater London. Nor was it plain what would happen where the Government wished to exclude an individual from an area where he has a residence.³⁹ Following a commitment by the Minister to “read the proceedings of the Committee” to ensure that the right balance had been struck, the amendment was withdrawn.

Electronic communications and devices

Hazel Blears sought to move a group of short amendments on this issue.⁴⁰ The primary amendment sought to include restrictions on persons “visiting or staying” at the suspect’s residence. A further amendment sought to make the provision of a fixed line telephone, computer with internet access and mobile phone discretionary. The Bill, as currently drafted, provides that such access must be provided (albeit subject to certain restrictions and monitoring).

Debate focused on a series of issues, such as whether a mobile telephone could be used as a detonator; the danger that a suspect might be able to give coded warnings or other information to co-conspirators; and, the risk that suspects might be able to switch the SIM card in any phone provided by the Home Office. Following a debate, the amendment was withdrawn.

Additional Measures

Paul Goggins sought to move an amendment that would have allowed the Secretary of State to impose additional measures in circumstances where there was “a serious terrorist threat” or “where they were necessary for the protection of the public.” The imposition of such measures would be subject to the additional safeguard that the Secretary of State would have to be satisfied “on the balance of probabilities” that the suspect was involved in terrorism-related activity.⁴¹

Mr Goggins justified this amendment as the Government had indicated that in exceptional circumstances, it might “seek Parliamentary approval for additional restrictive measures.”⁴² He suggested that there were issues of practicality if the Government had to use primary legislation to deal with exceptional circumstances. These had been set out in some detail by the Joint Committee which had considered the *Draft Detention of Terrorist Suspects (Temporary Extension) Bills*. The most obvious of these was that if the exceptional circumstances were to occur in the middle of August (and the Minister sought to introduce primary legislation to extend the requirements of TPIMs) it could take some time to recall Parliament. He proposed that at the very least, an order making power ought to be introduced as a Government amendment on Report.

In reply, James Brokenshire said that the Government would certainly consider the implications of the report of the Joint Committee on the draft Detention of Terrorist Suspects

³⁸ PBC 28 June 2011 c171

³⁹ PBC 28 June 2011 c172-3

⁴⁰ PBC 28 June 2011 c175

⁴¹ PBC 28 June 2011 c189

⁴² PBC 28 June 2011 c190

(Temporary Extension) Bills but that he resisted the scope of the amendment. The amendment was withdrawn.⁴³

3.4 Conditions to be met before imposing TPIMs

Clause 3 of the Bill sets out the conditions that have to be met before TPIMs can be imposed. These are generally referred to as conditions A-E. Condition A changes the standard of proof from one of reasonable suspicion (used under the control order regime) to that of reasonable belief. Gerry Sutcliffe sought to place on record the Opposition's support for this change.⁴⁴

Julian Huppert questioned why the standard of proof used was not that the Secretary of State was "satisfied on the balance of probabilities". In response James Brokenshire indicated that the Government believed that the test under discussion was appropriate for standard TPIMs provisions, but should it be necessary to introduce "enhanced TPIMs measures" by way of emergency legislation, the Secretary of State would have to be satisfied on the balance of probabilities that an individual had been involved in terrorism-related activities.

3.5 Involvement in terrorism-related activity

In response to a question by Gerry Sutcliffe, James Brokenshire confirmed that Clause 4(1)(d) (which relates to conduct that gives support or assistance to suspects) extended to the provision of financial support.⁴⁵

3.6 Two year limit for TPIMs notices

Clause 5 of the Bill, as presented, provides that a TPIMs notice cannot be renewed after two years, unless there has been some new terrorism-related activity on the part of the suspect. Hazel Blears sought to move an amendment to allow the Secretary of State to certify, in exceptional circumstances, that an individual who was subject to a TPIMs notice continued to pose such a substantial risk to the public that it was necessary to extend the TPIM for a further year. In that connection, she cited the comments of Mr Justice Wilkie in the case of *AM* (where there was no evidence of new involvement in terrorism, but a conclusion that the suspect would, given the opportunity, immediately return to his networks and active planning).⁴⁶

James Brokenshire responded that the Government had made it clear that where an individual did not re-engage in any terrorism-related activity and it was therefore not possible to impose any further measures, but where they were assessed as having the potential to pose some kind of risk, they would be "managed by the police and the security intelligence agencies through other arrangements."⁴⁷ He contended that the new measures would not be used to "warehouse people and should not be imposed indefinitely on individuals who have not been convicted of any crime."⁴⁸ He added that if the Opposition had in mind "emergency situations" it might be proper to return to the issue when there was pre-legislative scrutiny of any emergency legislation (see above). The amendment was withdrawn.

⁴³ PBC 28 June 2011 c195-6

⁴⁴ PBC 28 June 2011 c196

⁴⁵ PBC 28 June 2011 c198

⁴⁶ PBC 28 June 2011 c200

⁴⁷ PBC 28 June 2011 c204

⁴⁸ PBC 28 June 2011 c203

3.7 Court scrutiny of imposition of measures

Clauses 6-9 of the Bill, relating to court scrutiny of the imposition of TPIMs were agreed without amendment.

3.8 Criminal Investigations into terrorism-related activities

There was a debate on issues relating to criminal investigations into terrorism investigations (relating to **Clause 10** of the Bill). Questions were raised about the potential roles of the 43 police authorities and chief constables and the potential role of elected police commissioners. Gerry Sutcliffe asked about the possibilities for “confusion and concern.”⁴⁹ James Brokenshire indicated that:

If there was an offence, it would still fall to a particular force to investigate it, and the force would manage the order. However, the national co-ordinator of terrorist investigations advises all forces, and will obviously continue to do so. The responsibility for investigating an offence therefore lies with the appropriate police force, so there is a clear line of responsibility.⁵⁰

He added that when seeking to obtain a TPIM, there is a “join-up” between the security services, the police and the advice that is given to the Secretary of State in seeking to obtain the order and to set the conditions.

3.9 Review of ongoing necessity and variation of measures

Clauses 11 and 12 on the review of the ongoing necessity of measures and the provisions for variation of measures were agreed without significant debate, save that in relation to the latter, James Brokenshire agreed to consider “without obligation” whether a request for a variation of an order made by a suspect ought to be assessed by the Secretary of State “as soon as reasonably practicable.”⁵¹

3.10 Revocation and revival of TPIMs notice

Clause 13 makes provision for the revocation and revival of TPIMs notices. James Brokenshire moved an amendment (Amendment 130) to **Clause 13(2)**. That clause provided that:

The revocation of a TPIMs notice takes effect when the revocation notice is served or, if later, at the time specified for this purpose in the revocation notice.

The amendment would leave out the word “later” and insert the word “different”. The Minister explained that the amendment was minor, but was necessary since the original wording did not “provide sufficient flexibility for cases when the court directs the Secretary of State to revoke a notice with retrospective effect.” The amendment was agreed without division.

Clauses 14-18 which related to other changes concerning TPIMs notices, appeals and jurisdiction in relation to decisions under the legislation were agreed without amendment.

3.11 Proceedings relating to TPIMs

Schedule 4 of the Bill set out the detailed explanation of how proceedings related to TPIMs would operate in practice, including the relevant rules of court and the use of special advocates. Dr Huppert queried whether there would be any steps away from the use of special advocates. James Brokenshire noted that broader issues relating to the handling of

⁴⁹ PBC 30 June 2011 c233

⁵⁰ PBC 30 June 2011 c233

⁵¹ PBC 30 June 2011 c239

sensitive intelligence material were being examined in the context of a Green Paper⁵² (which had not been published at the time of writing). The Minister suggested that it would be possible to engage in further consideration of these “sensitive, significant and wide ranging issues” once the Green Paper was published.

3.12 Reports on the exercise of powers under the Act

Clause 19 would place a duty on the Secretary of State to lay quarterly reports on the exercise of powers under the legislation. Gerry Sutcliffe asked the form that these reports would take and whether there would be any opportunity to debate them.

James Brokenshire said that the report would include information about the extent of the Secretary of State’s use of her powers and the number of cases in which measures were imposed. It would also include details of court judgments relating to the use of powers handed down in the relevant reporting period. He stated that the Government intended to lay this information by way of a written ministerial statement.⁵³

3.13 Reviews of the operation of the Act

Gerry Sutcliffe proposed an amendment to **Clause 20** of the Bill, which relates to reports produced by the Independent Reviewer of Terrorism Legislation about the operation of the Act. Mr Sutcliffe’s amendment sought to ensure that the Secretary of State published the report within three months of the date that it was received. James Brokenshire initially argued that this was unnecessary. Hazel Blears then noted that the language of the Bill departed from the language of the 2005 Act (which contained a similar provision). She contended that the provision in the 2005 Act suggested a “measure of immediacy” and asked why the Government had departed from it.⁵⁴

The Minister promised to “consider the matter further” noting that it was not the Government’s intention to “sit on reports” and that he would expect reports from the Independent Reviewer to be published “on receipt, or promptly.” The Amendment was accordingly withdrawn.⁵⁵

3.14 Offences

James Brokenshire proposed two amendments to **Clause 21** (which relates to offences that could be committed under the Act). Both Amendments (131 and 132) were described as technical drafting amendments. The first amendment was to change the reference to “an” individual in Clause 21(1)(a) and replace it with “the” individual. This was said to ensure that the offence was more clearly and consistently framed, so that both subsections (a) and (b) of the clause referred to “the” individual.

The second amendment was more significant in scope. It removed the words “measures specified in the notice” at Clause 21(1)(b) and inserted the words “any measures specified in the TPIM notice” in their place. It also inserted a new sub clause which provided:

If the individual has the permission of the Secretary of State by virtue of Schedule 1 for an act which would, without that permission, contravene such a measure, the individual contravenes that measure by virtue of that act if the act is not in accordance with the terms of the permission.

⁵² PBC 30 June 2011 c249

⁵³ PBC 30 June 2011 c251-2

⁵⁴ PBC 30 June 2011 c253

⁵⁵ PBC 30 June 2011 c253

The Minister explained that as the Bill was originally drafted, there was a possible ambiguity as to whether a breach of terms of a permission would definitely be caught. The amendment was agreed without division.

3.15 Powers of entry and Fingerprints and samples

Clauses 22 and 23 and Schedule 6 (which relate to powers of entry and fingerprints and samples respectively) were agreed without amendment.

3.16 Minor and consequential amendments

Schedule 7 contains various minor and consequential amendments. The Minister moved three amendments to the schedule (136, 137 and 138). All of these were described as technical or drafting amendments and they were agreed without any debate.

3.17 Transitional and saving provisions

Schedule 8 contains significant number of transitional provisions relating to the proposed repeal of the 2005 Act.

There was a short debate on the schedule. Paul Goggins posed a number of questions as to whether an individual currently subject to a control order could be subsequently moved onto TPIMs without any evidence of new terrorism-related activity. Hazel Blears argued that if that were the case, it “exposed an inconsistency” at the heart of the Bill, since to renew a TPIM required new evidence, whereas it would be possible to move someone from a control order to a TPIM on the back of evidence that might be some years old.

James Brokenshire responded by shortly summarising the effect of the schedule:

The provision allows time for control orders to remain in place – a limited period of 28 days – during which the Secretary of State will consider the cases of those subject to them, including whether it is appropriate to impose a TPIM notice on them, and, when appropriate, apply to the court for permission to do so. When such a person is served with a TPIM notice, the control order will be revoked at the same time.⁵⁶

The Minister also confirmed that when an individual was transferred from a control order to a TPIM, when the TPIM was imposed for the first time, it would be possible to look at actions that had occurred before the Bill had come into force (even where that terrorism-related activity had occurred some years ago) although the Secretary of State would still have to be satisfied that the TPIM was necessary to protect the public and that the conditions set out in **Clause 3** were met. However, if a further TPIM was then sought, the authorities would have to look to new activity that might have occurred.⁵⁷

The schedule was agreed without amendment

3.18 Proposed sunset clause

Shabana Mahmood sought to move a series of amendments which would have had the effect, *inter alia*, of introducing a sunset clause into the legislation.⁵⁸ The mechanism she proposed reflected a provision previously included in the 2005 Act. Shabana Mahmood contended that:

⁵⁶ PBC 5 July 2011 c267

⁵⁷ PBC 5 July 2011 c268-70

⁵⁸ PBC 5 July 2011 c282

It is important that the Home Secretary is brought to the House each year to justify such an exceptional measure. That gives Members the opportunity to raise objections that their constituents might have about the regime.⁵⁹

This provoked a lengthy debate, which also focused on the issue of resources that would be provided to the police and security services.

James Brokenshire responded that the Government had not included some form of sunset clause or annual renewal clause on the basis that the Home Office's review of counter-terrorism powers had concluded that there was likely to be a need for specific measures to protect the public "for the foreseeable future." He cited Lord Carlile QC in support of the view that annual renewal was no longer appropriate. Shabana Mahmood agreed to withdraw the amendment, but said that the debate on the issue would continue at Report stage.⁶⁰

3.19 Territorial Extent

James Brokenshire moved a series of amendments (133, 134 and 135) relating to the territorial extent of the legislation (**Clause 27**). The first two amendments applied to Scotland. They reflected an agreement with the Scottish Government that relevant provisions that impinged on devolved matters (such as powers of entry, search and seizure and retention of fingerprints and samples, contained in **Schedules 5** and **6**) should extend to Scotland. The final amendment removed a reference to the Channel Islands in subsection 5. The Minister indicated that this was because "the Channel Islands have indicated that they would want to produce any required legislation themselves", rather than having the Act extended to them by Order in Council. The amendments were agreed without debate or division.

3.20 Access to intelligence material

Shabana Mahmood sought to move a new clause which would have obliged the Home Secretary to brief nominated members of the Official Opposition on the intelligence material relied upon by the Home Secretary when making TPIMs notices. The clause made plain that it would not oblige the Secretary of State to disclose all intelligence material relied upon, but would require her to brief the nominated representatives so that they had "sufficient understanding of the factors and actions the Home Secretary has taken into consideration in pursuing a TPIM notice against an individual." James Brokenshire replied that it would be "unprecedented and inappropriate" for Opposition politicians routinely to receive briefings on sensitive intelligence in individual cases. The motion was withdrawn.⁶¹

4 Scrutiny by the Joint Committee on Human Rights

On the 11 July 2011, the Joint Committee on Human Rights published a report, entitled *Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill*. The Committee made a number of conclusions and recommendations, which are summarised below.

- The Committee stated that "the overriding priority of public policy in this area" should be the criminal prosecution of individuals suspected of involvement in terrorist activity. For that reason, it favoured Lord Macdonald's approach to bring the TPIMs regime into the criminal justice process. In particular, the Committee recommended that TPIMs should only last as long as an active criminal investigation is continuing (or for a maximum of two years, whichever is shorter);

⁵⁹ PBC 5 July 2011 c284

⁶⁰ PBC 5 July 2011 c307-8

⁶¹ PBC 5 July 2011 c309-11

- The Committee noted that it “remained disappointed by the Government’s reluctance to expose its proposed replacement regime to the rigours of formal and regular post-legislative scrutiny which annual renewal entails”;
- The Committee recommended that the Bill be amended to require the Secretary of State, at the outset, to provide the suspect with sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations. It also suggested that a further improvement would be for the provision of facilities for special advocates to take instruction from suspects whose interests they represent, after having seen the closed material containing the allegations against the suspect (provided that they had permission from the judge).

In addition to these comments on the provisions themselves, the Committee questioned the lack of progress in relation to the use of [intercept evidence](#) in terrorism cases.

Finally, the Committee welcomed a commitment by the Government to make draft legislation for “enhanced TPIMs” available for pre-legislative scrutiny. The need for enhanced TPIMs had been foreshadowed by the Government’s *Counter-Terrorism Review* which had noted that there might be a need for some “additional restrictive measures” in case of future emergency (including curfews, further restrictions on association, communication and movement).

This draft legislation had not been published at the time of writing.

Appendix 1 – Membership of the Committee

Chairs: Martin Caton, Mr Lee Scott

Blears, Hazel (Salford and Eccles) (Lab)
Brake, Tom (Carshalton and Wallington) (LD)
Brokenshire, James (Parliamentary Under-Secretary of State for the Home Department)
Buckland, Mr Robert (South Swindon) (Con)
Donaldson, Mr Jeffrey M. (Lagan Valley) (DUP)
Ellwood, Mr Tobias (Bournemouth East) (Con)
Goggins, Paul (Wythenshawe and Sale East) (Lab)
Gummer, Ben (Ipswich) (Con)
Harris, Rebecca (Castle Point) (Con)
Huppert, Dr Julian (Cambridge) (LD)
Mahmood, Shabana (Birmingham, Ladywood) (Lab)
Morden, Jessica (Newport East) (Lab)
Newmark, Mr Brooks (Lord Commissioner of Her Majesty's Treasury)
Ollerenshaw, Eric (Lancaster and Fleetwood) (Con)
Phillips, Stephen (Sleaford and North Hykeham) (Con)
Robertson, John (Glasgow North West) (Lab)
Stewart, Bob (Beckenham) (Con)
Sutcliffe, Mr Gerry (Bradford South) (Lab)
Tami, Mark (Alyn and Deeside) (Lab)