



## Draft Enhanced Terrorism Prevention and Investigation Measures Bill

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The Government published the [Draft Enhanced Terrorism Prevention and Investigation Measures Bill](#) (Cm 8166) on 1 September 2011.

The Bill was foreshadowed by the Government's Counter-Terrorism Review. The review, which was published in January 2011, had indicated that the Government would repeal the control order regime, established by the *Prevention of Terrorism Act 2005*, and replace it with a series of Terrorism Prevention and Investigation Measures (TPIMs). The TPIMs Bill was introduced on 23 May 2011 and had its Second Reading on 7 June. The [Counter-Terrorism Review](#) stated that although control orders should be repealed and replaced with less intrusive measures, there could be "exceptional circumstances" where it would be necessary for the Government to seek Parliamentary approval for additional restrictive measures. Following pressure from the Parliamentary Joint Committee on Human Rights, the Government committed to publish draft emergency legislation.

The Draft Bill would provide powers for the Home Secretary to impose "enhanced TPIM notices" specifying more stringent restrictions than those available under the TPIM Bill if approved by Parliament. The enhanced measures would include relocation provisions, curfews and a total ban on suspects using communication devices. The Explanatory Notes to the Draft Bill suggest that legislation would only be introduced "in the event of a very serious terrorist risk that cannot be managed by any other means."

In addition to publishing the Draft Bill, the Government has also sought to introduce a new Clause into the TPIMs Bill (NC 5) to allow enhanced measures to be imposed on a temporary basis where Parliament has been dissolved.

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## 1 Summary

The Government published the [Draft Enhanced Terrorism Prevention and Investigation Measures Bill](#) (Cm 8166) on 1 September 2011. The Bill was foreshadowed by the Government's [Counter-Terrorism Review](#). The review, which was published in January 2011, had indicated that the Government would repeal the [control order regime](#), established by the *Prevention of Terrorism Act 2005*, and replace it with a series of Terrorism Prevention and Investigation Measures (TPIMs).

The *Terrorism Prevention and Investigatory Measures Bill* was introduced on 23 May 2011 and had its Second Reading on 7 June. A [Research Paper RP \(11/46\)](#) was published on 31 May, setting out the background to the legislation. A second [Research Paper \(RP11/62\)](#) was published on 24 August 2011, setting out a summary of the Committee Stage of the Bill.

The Counter-Terrorism Review stated that although control orders should be repealed and replaced with less intrusive measures, there could be "exceptional circumstances" where it would be necessary for the Government to seek Parliamentary approval for additional restrictive measures.<sup>1</sup> Following pressure from the Parliamentary Joint Committee on Human Rights<sup>2</sup>, the Government committed to publish draft emergency legislation.

The Draft Bill would provide powers for the Home Secretary to impose "enhanced TPIM notices" specifying more stringent restrictions than those available under the TPIM Bill if approved by Parliament. The enhanced measures would include relocation provisions and a total ban on suspects using communication devices. The Opposition had pressed for such measures to form part of the TPIMs Bill at the Committee Stage, where particular concern had been expressed about the Government's decision to remove the ability to relocate terror suspects.

The debate around relocation focused on recent court cases, such as [CD v Secretary of State for the Home Department](#) and [BM v Secretary of State for the Home Department](#) (in which the Home Secretary, Theresa May, had sought to uphold (or impose) relocation restrictions on terror suspects under the control order regime).

In addition to publishing the Draft Bill, the Government has also sought to introduce a new Clause into the TPIMs Bill currently before Parliament ([NC 5](#)) to allow enhanced measures to be imposed on a temporary basis where Parliament has been dissolved.

## 2 Commentary

As mentioned above, the new enhanced measures would only be put before Parliament where there were "exceptional circumstances" which justified their introduction. It is likely that there will be much debate about the precise nature of the circumstances in which enhanced measures would be introduced. The Explanatory Notes to the Draft Bill suggest that legislation would only be introduced "in the event of a very serious terrorist risk that cannot be managed by any other means."

### 2.1 Measures which could be introduced

The Explanatory Notes make clear that Enhanced Measures could include:

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<sup>1</sup> Home Office, Counter-Terrorism Review, Cm 8004, January 2011, p43

<sup>2</sup> [Joint Committee on Human Rights, Transcript of Oral Evidence with Baroness Neville-Jones](#), HC 797-i, 8 February 2011, Qq 51-56

- “Residence measures” (which would allow the Secretary of State to require an individual to reside at a specified residence, which may be in any part of the United Kingdom and which may be provided by the Secretary of State);
- “Curfew” (this differs from an overnight residence measure as it would allow the Secretary of State to impose a curfew which may fall at any time during the day for up to 16 hours);
- “Movement restrictions measures” (which would allow the Secretary of State to specify an area outside of which the individual may not travel without permission or without meeting other specified conditions);
- “Electronic communication device measure” (this could include a total ban on access to devices);
- “Association measures” (such restrictions could include a requirement not to communicate or associate with any person without the prior permission of the Secretary of State).

Prior to imposing measures, the Home Secretary would have to have met similar conditions to those set out in the TPIMs Bill. However, there would be two more stringent requirements. The first is that the the Secretary of State would have to be satisfied ‘on the balance of probabilities’ – a higher test than in the 2011 Act, which requires ‘reasonable belief’ – that the individual is or has been involved in terrorism-related activity.

The second is that not only must the Secretary of State reasonably consider that it is necessary, for purposes connected with preventing or restricting the individual’s involvement in terrorism-related activity, for each of the specified measures to be imposed on the individual, but at least some of the measures imposed must be measures that cannot be imposed under a standard TPIM notice. The Explanatory Notes state that this second limb of the condition ensures that the regimes for standard and enhanced TPIM notices are kept separate.

Clause 9 of the Draft Bill provides that the operative clauses in the Bill (“the Secretary of State’s enhanced TPIM powers”) would expire after 12 months unless they are renewed (for up to a further 12 months) by order subject to the affirmative resolution procedure. The Draft Bill’s provisions would extend to England, Wales, Scotland and Northern Ireland.

## 2.2 Responses to the Draft Bill

The Opposition has argued that the Government’s actions are “irresponsible, incompetent and potentially dangerous.”<sup>3</sup> Shadow Home Secretary, Yvette Cooper, was quoted by the *Guardian* as having said that “the Home Secretary is putting political deals and fudges ahead of national security.”<sup>4</sup>

David Davis, a former Shadow Home Secretary, has argued that “this seems to be at least as ill thought out as control orders, if not more so [...]The impression we had was [that] one of the important changes, from control orders to TPIMs, was losing internal exile.”<sup>5</sup>

In contrast, the *Guardian* has quoted “senior Liberal Democrat sources in Government” as having insisted that the new measures were still less draconian than control orders, and did not represent a U-turn on pre-election promises to take greater account of civil liberties.<sup>6</sup>

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<sup>3</sup> *The Independent*, Government move to relocate terror suspects, 1 September 2011

<sup>4</sup> *The Guardian*, Exile plan for terror suspects is a bungled measure, say civil liberties groups, 1 September 2011

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

Civil liberties NGOs, such as Liberty, have continued to object to the general principle of measures out with the criminal justice system. Shami Chakrabarti, the director of Liberty, was quoted as having said:

While politicians tinker with the deckchairs on the Titanic, community punishments without charge remain unsafe and unfair. You can call them control orders, Tpims, or whatever you like, but they still allow dangerous terrorists to live amongst us whilst innocent people are punished forever with no opportunity to stand trial and clear their name. Ten years into the 'war on terror', have we really learned so little?<sup>7</sup>

The UK Human Rights Blog has produced a short summary of recent developments, including the publication of the Draft Bill, in a post entitled "[Anti-terrorism powers for a rainy day](#)."

### **3 New Clauses proposed at Report Stage of TPIMs Bill**

Third Reading and Report Stage of the original TPIMs Bill will occur on 5 September 2011. As mentioned above, the Government has proposed an amendment (NC 5) which would allow for enhanced measures to be imposed on a temporary basis where Parliament has been dissolved.

The potential need for special measures that could be used during dissolution emerged from the separate report of the [Joint Committee on the Draft Detention of Terrorist Suspects \(Temporary Extension\) Bills](#) (that looked into pre-charge detention powers). The Committee observed that if 'exceptional circumstances' occurred during a recess, or particularly dissolution, the ability of a Government to pass legislation could be compromised.

The Government has also proposed a form of "sunset clause" for the original Bill (NC 3). The Clause provides that the power to impose TPIMs would expire 5 years after the Act was passed, unless the Secretary of State revived the powers by way of statutory instrument. The New Clause would also allow the Secretary of State to repeal the TPIMs powers by way of statutory instrument.

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<sup>7</sup> Ibid, and see also Liberty, [Anyone for TPIMs, control orders with a twist](#), 2 September 2011