These notes refer to the Counter-Terrorism and Security Act 2015 (c.6) which received Royal Assent on 12 February 2015

COUNTER-TERRORISM AND SECURITY ACT 2015

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Counter-Terrorism and Security Act 2015 which received Royal Assent on 12 February 2015. They have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Government considered that there was a need to legislate in order to reduce the terrorism threat to the UK. On 29 August 2014, the independent Joint Terrorism Analysis Centre (JTAC) raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE. This means that a terrorist attack is "highly likely". Nearly 600 people from the UK who are of interest to the security services are thought to have travelled to Syria and the region since the start of the conflict, and the security services estimate that around half of those have returned. In the context of this heightened threat to our national security, the provisions in this Act will strengthen the legal powers and capabilities of law enforcement and intelligence agencies to disrupt terrorism and prevent individuals from being radicalised in the first instance.

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

5. The UK has a strategy for countering terrorism: CONTEST. The aim of CONTEST is to reduce the risk to the UK and its interests overseas from terrorism, so that people can go about their lives freely and with confidence. The strategy continues to be based around four main areas of work:

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

- Prepare: working to minimise the impact of an attack and to recover from it as quickly as possible.

Provisions in this legislation will strengthen powers and capabilities in the "Pursue", "Prevent", and "Protect" areas of work in particular.

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

OVERVIEW OF THE STRUCTURE OF THE ACT

7. This Act is in 7 parts.

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

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

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

11. Part 4 of the Act brings forward a number of measures on border and transport security. These provisions extend the scope for authority-to-carry ("no fly") schemes; allow the Secretary of State to make regulations in relation to passenger, crew and service information; and to give directions in relation to security measures to aviation, shipping or rail transport operating to the UK. The Act also introduces powers to make regulations which impose penalties for failure to comply with requirements to provide

passenger, crew and service information; an authority-to-carry scheme; or, in the case of aircraft, screening requirements.

12. Part 5 addresses the risk of being drawn into terrorism. Chapter 1 creates a duty for specified bodies to have due regard, in the exercise of their functions, to the need to prevent people from being drawn into terrorism. It also gives the Secretary of State a power to publish guidance to which specified bodies must have regard when fulfilling this duty. The legislation puts the existing Prevent programme on a statutory footing. Chapter 2 provides that each local authority must have a panel to provide support for people vulnerable to being drawn into terrorism. The legislation puts the existing voluntary programme for people at risk of radicalisation on a statutory footing (in England and Wales this is the "Channel Programme").

13. Part 6 of the Act makes amendments relating to the Terrorism Act 2000. Section 42 amends the Terrorism Act 2000 to provide that an insurer commits an offence if they make a payment under an insurance contract for money or property handed over in response to a demand made wholly or partly for the purposes of terrorism, when the insurer knows or has reasonable cause to suspect that the money has been handed over for that purpose. This clarifies the intent of the original legislation to prohibit such payments. Section 43 introduces Schedule 8, which amends paragraph 9 of Schedule 7 to the Terrorism Act 2000 regarding the power to examine goods at ports and the border, together with amending other enactments relating to that power. The amendments in this Act clarify the legal position in relation to where this power may be exercised and the examination of goods which comprise items of post.

14. Part 7 of the Act relates to miscellaneous and general provisions. In the miscellaneous provisions, sections 44 and 45 make amendments to the role of the Independent Reviewer of Terrorism Legislation by extending his statutory remit to cover other counter-terrorism legislation, including Part 1 of this Act. They also amend the reporting arrangements for the Independent Reviewer, requiring him to set out a work programme at the beginning of each calendar year specifying the matters which will be subject to review in the following 12 month period and to notify this to the Secretary of State or, in the case of reviews of the Terrorist Asset-Freezing etc Act 2010, the Treasury. The Terrorism Act 2000 will continue to be subject to annual review. Section 46 provides a power enabling the Secretary of State to establish a Privacy and Civil Liberties Board which will support the statutory role of the Independent Reviewer. Section 47 provides for the review of certain naturalisation decisions by the Special Immigration Appeals Commission; specifically applications for British Overseas Territories citizenship. The general provisions at sections 48 to 53 relate to matters such as consequential amendments and territorial extent.

TERRITORIAL EXTENT AND APPLICATION

15. The provisions in Part 5 extend to England and Wales and Scotland. The provisions in Parts 1 to 4 and Parts 6 and 7 extend to England and Wales, Scotland and Northern Ireland. Section 51(3) states that provisions in Parts 1 and 4 only may also be extended to any of the Channel Islands or the Isle of Man by Order in Council. Section 51(4) to (8) provides that where this Act amends legislation which may be extended to the Channel Islands or the Isle of Man, the power may be exercised in relation to any amendments made to those Acts by this Act.

16. The Act deals with reserved matters.

PART 1: TEMPORARY RESTRICTIONS ON TRAVEL

Summary and Background

17. Part 1 introduces two new powers to place temporary restrictions on travel.

Commentary on Sections

Chapter 1: Powers to seize travel documents

Section 1: Seizure of passports etc from persons suspected of involvement in terrorism

18. *Section 1(1)* introduces Schedule 1. This makes provision for the seizure and temporary retention of travel documents where there are reasonable grounds to suspect that a person at a port has the intention of leaving Great Britain or the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom.

19. *Section 1(2) and (3)* provide that civil legal aid may be made available for hearings of applications, under *paragraph 8* of Schedule 1, to extend the 14 day time period in which an individual's travel documents may be retained in England and Wales and in Northern Ireland respectively. Civil legal aid is available in Scotland under the Legal Aid (Scotland) Act 1986.

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

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

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

22. *Paragraph 4*provides that where a constable (or on the constable's direction, an immigration officer or customs official) is holding travel documents under these powers, the constable must seek authorisation for the documents' retention from a senior police officer as soon as possible. The senior officer must be of a least the rank of superintendent *(paragraph 1(5))*. The senior officer may grant the authorisation if satisfied that there are reasonable grounds for the suspicion that the person intends to leave GB or the UK in order to become involved in terrorism-related activity outside the UK. If authorisation is not granted, the documents must be returned as soon as possible, unless they can be retained under any other power (for example a power under immigration legislation) *(paragraph 4(6) and (9))*. A person whose travel document is retained under these powers must be informed of the constable's suspicion, unless it

is anticipated that the application for authorisation will be dealt with immediately so that the period during which the document is withheld may be very short *(paragraph 4(3) and (4))*.

23. *Paragraph 5* makes provision for the retention or return of seized documents. *Paragraph 5(1)* specifies the circumstances in which a travel document may continue to be retained. These are while:

    a) the Secretary of State considers whether to cancel the person's passport;

    b) consideration is given as to whether or not to charge the person with an offence;

    c) consideration is given to making the person subject to an order or measure connected with protecting the public from a risk of terrorism; or

    d) steps are being taken to carry out any of the above.

24. A travel document may not be retained beyond 14 days beginning with the day after the day the document was seized, unless that period is extended by a judicial authority *(paragraph 5(2))*. Documents must be returned to a person as soon as possible where none of the above reasons for retaining them continue to apply or where the 14 day period has expired, unless they can be lawfully retained under another power or provision not in Schedule 1 or detained for criminal or deportation proceedings under *paragraph 7 (paragraph 5(3))*. *Paragraph 5(4)* provides that the constable in possession of a person's travel document must explain to him or her the grounds on which the document can be retained. There will be a statutory Code of Practice which will provide further detail about the information that must be provided to those stopped or whose documents are retained.

25. *Paragraph 6* provides that when authorisation has been given to retain travel documents and the documents are still being retained at the end of 72 hours (beginning from the time when the travel documents were first taken from the person) a police officer of at least the rank of chief superintendent, and at least as high a rank as the senior police officer who authorised the retention of the travel documents, must carry out a review of whether the decision to authorise retention of the travel documents was flawed *(paragraph 6 (1) to(2))*. The review must begin within the 72 hour period and be completed as soon as possible. The findings of the review must be communicated to the relevant chief constable *(paragraph 6(3))*. The chief constable must consider those findings and take any action considered appropriate *(paragraph 6(4))*. If the power to search for or seize documents under *paragraph 2* was exercised by an accredited officer (as described at *paragraph 17(1)*) the findings of the review must also be communicated to the Secretary of State *(paragraph 6(5))*.

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

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

28. *Paragraph 9* provides that the person to whom the application relates must be given an opportunity to make oral or written representations about the application and is

entitled to legal representation at the hearing *(paragraph 9(1) and (2))*. Where a person is entitled to be legally represented, is not represented and wishes to be represented, the judicial authority must adjourn the hearing to enable the person to obtain legal representation *(paragraph 9(2))*. The judicial authority may exclude the person to whom the application relates and anyone representing that person from any part of the hearing *(paragraph 9(3))*. The judicial authority may find this necessary if, for example, specified information upon which the police intend to rely is to be withheld from the person whose travel documents are being retained and their representative.

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

30. *Paragraph 11(1)* provides that the judicial authority may adjourn the hearing of an application under *paragraph 8* only if the hearing is adjourned to a date before the expiry of the 14 day period unless the adjournment is to enable the person to obtain legal representation, in which case the adjournment must be to a date before the expiry of the 30 day period *(paragraph 11(2))*. If the application is adjourned to a date beyond the 14 day period the judicial authority must extend the retention period until that date *(paragraph 11(3))*.

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

32. *Paragraph 13* restricts repeated use of the power against the same individual. Where a power to retain a document is exercised against a person under this Schedule and any of the powers available under this Schedule have already been exercised in relation to the same person on two or more occasions in the preceding six months, then the travel documents may be retained only for a period of 5 days *(paragraph 13(1) and (2))*. The senior police officer may apply for an extension of this 5 day period up to a maximum of 30 days, but in these circumstances the application will only be granted if the judicial authority thinks that there are exceptional circumstances which justify the further use of these powers in relation to the same person as well as being satisfied that the investigations about further action are being carried out diligently and expeditiously.

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

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

35. *Paragraph 17*provides that the Secretary of State may designate a qualified immigration officer or customs official as an "accredited" immigration officer or customs official. These will be officers or officials who have had further training in the exercise of the Schedule 1 powers. An accredited immigration officer or customs official will have the same powers as a constable to search for and seize travel documents. The accredited officer or official may retain any travel documents taken, while he or she seeks authorisation for their retention from a senior police officer. If authorisation is given, the documents must be handed over to a constable.

36. *Paragraphs 18 to 20*place the Secretary of State under a duty to issue a code of practice with regard to the functions under this Schedule. The paragraphs provide that the Secretary of State may comply with the obligations to publish a draft of the code of practice, consider representations on the code, make any modifications and lay the draft code before Parliament before the Act receives Royal Assent. The code of practice will be first issued using the "made affirmative" procedure because, given the urgency of the need to disrupt travel, the temporary passport seizure power comes into force on the day after Royal Assent and the code of practice needs to be in operation simultaneously.

Chapter 2: Temporary exclusion from the United Kingdom

Section 2: Temporary exclusion orders

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

38. *Subsection (2)* provides that the Secretary of State may impose a TEO only where five conditions have been met. *Subsections (3) to (7)* outline those conditions. The Secretary of State must reasonably suspect that the individual is, or has been, involved in terrorism-related activity outside the United Kingdom and must reasonably consider that it is necessary to impose a TEO for purposes connected with protecting the public in the UK from a risk of terrorism. While the TEO is in place, the Secretary of State must keep under review whether the second of these conditions is met.

39. Additionally, the Secretary of State must reasonably consider that the individual is outside the UK when the order is imposed and the individual must have the right of abode in the UK. *Section 2(1)*of the Immigration Act 1971 provides that British citizens and certain Commonwealth citizens have the right of abode in the UK.

40. The Secretary of State may impose a TEO only if the court has given prior permission or if he or she reasonably considers that the urgency of the case requires an order to be imposed without obtaining such permission.

Section 3: Temporary exclusion orders: prior permission of the court

41. This section makes provision for the role of the court in providing prior permission to the Secretary of State to impose a TEO. It details the function of the court, allows the court to consider the application even if the person is not aware of the proposal to impose a TEO on him or her, and requires the court to apply judicial review principles in determining it. It also introduces Schedule 2.

Schedule 2: Urgent temporary exclusion orders: reference to the court etc

42. This Schedule requires the Secretary of State to refer an urgent T EO to court after imposing it. The Schedule requires the court to apply judicial review principles and gives the court power to quash an urgent TEO.

Section 4: Temporary exclusion orders: supplementary provision

43. *Subsections (1)* and *(2)* provide for giving notice of a TEO to the person on whom it has been imposed. There is a duty on the Secretary of State to give notice; including an explanation of how the individual can apply for a permit to return (more detail on permits to return is given in section 5).

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

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

46. *Subsection (7)* makes clear that a TEO remains valid even where an individual has returned to the UK. This is because the order may place some obligations on the individual once they have returned to the country (section 9 provides more detail on this).

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

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

Section 5: Permit to return

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

50. *Subsections (4) to (6)* specify that a permit to return must state the time at which, or period of time during which, the individual is permitted to arrive on return to the United Kingdom. It must also state the manner in which the person is permitted to return, and the place where the individual is permitted to arrive.

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

Section 6: Issue of permit to return: application by individual

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

53. *Subsection (5)* outlines the definitions of "application" and "relevant return time" in this section.

Section 7: Issue of permit to return: deportation or urgent situation

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

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

Section 8: Permit to return: supplementary provision

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

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

58. *Subsection (3)* provides that an application for a permit to return under section 6 does not prevent a subsequent application from being made.

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

Section 9: Obligations after return to the United Kingdom

60. *Subsection (1)* allows for the Secretary of State to impose obligations on an individual subject to a TEO when they have returned to the UK. The obligations which the Secretary of State may impose on the individual are outlined at *subsection (2)*. These include obligations to report to a police station and attendance at appointments, under paragraph 10 or 10A of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 (that paragraph 10A is inserted by section 19 of this Act). Attendance at appointments may include de-radicalisation programmes amongst other meetings. The individual may also be required to notify the police of their place of residence and any change of address.

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

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

Section 10: Offences

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

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

65. *Subsection (3)* makes it an offence for an individual subject to a TEO not to comply without a reasonable excuse with obligations imposed by the Secretary of State under section 9.

66. *Subsection (4)* provides that deemed service of notice (where the relevant notice has not actually been given to an individual) does not prevent an individual from showing that lack of knowledge of the TEO, or of the obligation imposed under section *9*, was a reasonable excuse for the purposes of this section.

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

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

69. *Subsection (8)* amends subsection (1A) of section 2 of the UK Borders Act 2007 to replace “the individual is subject to a warrant for arrest” with “the individual (a) may be liable to detention by a constable under section 14 of the Criminal Procedure (Scotland) Act 1995 in respect of an offence under section 10(1) of the Counter-Terrorism and Security Act 2015 or (b) is subject to a warrant for arrest”. This means that designated immigration officers in Scotland will have the power to detain any person they think is liable to arrest for the offence of returning to the UK in breach of a TEO. Equivalent provision exists in England, Wales and Northern Ireland.

Section 11: Review of decisions relating to temporary exclusion orders

70. This section makes provision for an individual subject to a TEO to be able to apply to the court for a statutory review of the decision to impose a TEO, and any associated in-country measures, once the individual is back in the United Kingdom. It details which decisions the individual may apply to have reviewed, the principles the court must apply in reviewing the decisions, and the powers it has on review.

Section 12: Temporary exclusion orders: proceedings and appeals against convictions

71. This section introduces Schedule 3 and Schedule 4.

Schedule 3: Temporary exclusion orders: proceedings

72. This Schedule details the provisions that can be made by rules of court in relation to temporary exclusion order proceedings, and the provisions that must be made in relation to disclosure. *Paragraphs 8 and 9* provide for the use of advisers appointed by the Lord Chancellor in any Temporary Exclusion Order proceedings or appeal proceedings. *Paragraph 10* provides that a special advocate may be appointed to represent the interests of the party if the party and any legal representatives of the party are excluded from the proceedings.

Schedule 4: Temporary exclusion orders: appeals against convictions

73. This Schedule details the appeal proceedings available to an individual where a TEO or associated in-country measure under it is quashed or altered and the individual has already been convicted of an offence under section 10(1) or (3) in connection with the TEO or measure.

Section 13: Regulations: giving of notices, legislation relating to passports

74. *Subsections (1)* and *(2)* provide that the Secretary of State may, by regulations, make provision about the giving of notice under sections 4 and 9. Such regulations may make provision about cases in which notice is deemed to have been given.

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

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

Section 14: Chapter 2: interpretation

77. *Subsection (2)* provides definitions for terms set out in Chapter 2 of Part 1.

78. *Subsection (3)* makes provision in respect of when an individual is subject to a TEO and when an individual is subject to obligations imposed under section 9.

79. *Subsections (4) to (5)* define "terrorism-related activity" for the terms of the imposition of a TEO and provide that an individual's involvement in such activity can have occurred before or after the coming into force of section 2.

80. *Subsections (6)* and *(7)* make provision in respect of the terms "return to the United Kingdom" and "deportation".

Section 15: Chapter 2: consequential amendments

81. This section makes amendments to the Senior Courts Act 1981, the Criminal Justice Act 1988 and the Regulation of Investigatory Powers Act 2000. These amendments are designed to ensure that the court's role in relation to a temporary exclusion order can be effective.

PART 2: TERRORISM PREVENTION AND INVESTIGATION MEASURES

Summary and Background

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

Commentary on Sections

83. Sections 16 to 20 amend the TPIM Act. Schedule 1 to the TPIM Act sets out an exhaustive list of the types of measures which may be imposed on an individual served with a TPIM notice. The Secretary of State may impose any or all of the measures that he or she reasonably considers necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity.

Section 16: TPIMs: overnight residence measure

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

85. *Subsection (5)* reproduces existing provision in *paragraph 1* of Schedule 1 to the TPIM Act to the effect that the specified residence may be provided by the Secretary of State. There is no requirement that it must be.

Section 17: TPIMs: travel measure

86. Section 17 amends certain provisions in the TPIM Act relating to travel measures (*subsection (1)*). *Subsection (2)* amends section 2 of the TPIM Act to provide that the Secretary of State must publish factors that he or she considers are appropriate to take into account when deciding whether to impose travel restrictions under *paragraph 2* of

Schedule 1 to the TPIM Act. Factors could include - this is indicative only - proximity to airports, prohibited associates and other TPIM subjects, variety/number of services within the restricted area.

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

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

Section 18: TPIMs: weapons and explosives measure

89. Section 18 allows the Secretary of State to impose on an individual subject to a TPIM notice a prohibition on making an application for a firearm certificate or shot gun certificate, a prohibition on possessing an imitation firearm and a prohibition on possessing offensive weapons or explosives.

Section 19: TPIMs: appointments measure

90. Section 19 allows the Secretary of State to require an individual to attend meetings with such persons as the Secretary of State may specify, at such locations and at such times as the Secretary of State may by notice require. The specified person(s) may also choose the time and place of the meeting.

Section 20: TPIMs: miscellaneous amendments

91. *Subsection (1)* amends section 3(1) of the TPIM Act so that, before imposing a TPIM notice, the Secretary of State must be satisfied on the balance of probabilities (rather than that he or she must "reasonably believe", as before) that an individual is, or has been, involved in terrorism-related activity.

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

PART 3: DATA RETENTION

Summary and Background

93. Communications data is the who, where, when and how of a communication, but not its content. Internet Protocol (IP) address resolution is the ability to identify who in the real world was using an IP address at a given point in time. An IP address is automatically allocated by a network provider to a customer's internet connection, so that communications can be routed backwards and forwards to the customer. Communications service providers (CSPs) may share IP addresses between multiple

users. The providers generally have no business purpose for keeping a log of who used each address at a specific point in time.

Commentary on Sections

Section 21: Retention of relevant internet data

94. Section 21 amends section 2(1) of the Data Retention and Investigatory Powers Act 2014 (DRIPA) which provides definitions relating to the retention of relevant communications data under that Act. This enables the Secretary of State to require communications service providers to retain an additional category of communications data, namely data that will allow relevant authorities to link the unique attributes of a public Internet Protocol (IP) address to the person (or device) using it at any given time.

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

96. *Subsection (3)* inserts a definition of the "relevant internet data", necessary to reliably attribute internet protocol addresses to a person or device, to which *subsection (2)* relates. *Paragraph (a)* of the inserted definition limits this to communications data which relates to an internet access service or an internet communications service. An internet access service is a service that provides access to the internet and can include a home broadband connection, mobile internet or publicly available wi-fi. An internet communications service is a communications service which takes place on the internet and can include internet telephony, internet email and instant messaging services. *Paragraph (b)* of the inserted definition describes data to be retained as data which may be used to identify, or assist in identifying, the internet protocol address or other identifier which belongs to the sender or recipient of a communication. Such data could include data required to identify the sender or recipient of a communication (which could be a person or a device), the time or duration of a communication, the type, method or pattern of a communication (e.g. the protocol used to send an email), the telecommunications system used or the location of such a telecommunications system that the person was communicating from. An IP address can often be shared by hundreds of people at once – in order to resolve an IP address to an individual other data ("other identifier" in this section) would be required. Data necessary for the resolution of IP addresses could include port numbers or MAC (media access control) addresses. *Paragraph (c)* of the inserted definition specifically prevents a telecommunications operator providing an internet access service from retaining under this legislation data that explicitly identifies the internet communications service or websites a user of the service has accessed. This type of data is sometimes referred to as web logs.

97. *Subsection (4)* adds definitions for "communication", "identifier" and "person" to section 2(1) of DRIPA.

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

PART 4: AVIATION, SHIPPING AND RAIL

Summary and Background

99. The provisions in Part 4 allow the Secretary of State to introduce authority-to-carry schemes which replace the current inbound arrangements with broader inbound and outbound arrangements. They also amend existing legislation to enhance the provision of passenger, crew and service information; provide that carriers may be required to use passenger information systems capable of receiving directions when authority to carry is refused or specific security measures are required and enable enforceable standing requirements for passenger, crew and service information to be imposed on specified categories of incoming and outgoing non-scheduled traffic. New regulations

will establish a civil penalty regime for failure to comply with authority-to-carry and passenger, crew and service information requirements. Part 4 also provides for amendments to current provisions for directions relating to aviation, shipping and rail to strengthen the Secretary of State's ability to impose security measures on aircraft and rail operators as a condition of their operation to the UK and on shipping operators as a condition of their entry into UK ports and, in respect of aviation, gives powers to establish a civil penalty for failing to provide requested information or to comply with a direction.

Commentary on Sections

Section 22: Authority-to-carry schemes

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

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

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

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

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

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

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

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

108. *Subsection (10)* repeals the existing authority to carry provision at section 124 of the Nationality, Immigration and Asylum Act 2002. The Security and Travel Bans Authority to Carry Scheme 2012 ("the 2012 Scheme") and the Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012 ("the 2012 Regulations") made under section 124 will also cease to have effect when *subsection (10)* is brought into force (which will be done by commencement regulations: see section 52(3)(b)).

Section 23: Authority-to-carry schemes: entry into force etc

109. *Subsections (1) and (2)* provide that any new authority-to-carry scheme, made by the Secretary of State under section 22, would be subject to direct Parliamentary scrutiny and brought into force by regulations subject to the affirmative procedure.

110. *Subsections (3) and (4)* provide that any revised authority-to-carry scheme, made by the Secretary of State under section 22, would equally be subject to direct Parliamentary scrutiny and brought into force by regulations subject to the affirmative procedure.

111. *Subsection (5)* provides that any regulations made to bring an authority-to-carry scheme into force under this section may include transitional or saving provision.

Section 24: Penalty for breach of authority-to-carry scheme

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

113. *Subsection (2)* requires that regulations must identify the scheme to which they refer.

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

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

116. *Subsection (5)* requires that the regulations must provide that a carrier cannot be penalised for breach of the requirements of an ATC scheme if the breach is a failure to provide information under sections 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971 and the carrier is already being prosecuted under section 27 of that Act or has been penalised under paragraph 27BB of Schedule 2 to that Act for the same breach. Similarly, where the breach is a failure to provide information under section 32 or 32A of IANA 2006 and the carrier has already been penalised for the same breach under section 32A or is being prosecuted under section 34 of that Act, they cannot be penalised for the breach under these regulations.

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

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

Section 25: Aviation, shipping and rail security

119. This section introduces Schedule 5, which makes amendments about passenger, crew and service information in relation to aircraft and ships, and makes amendments to existing aviation, maritime and rail security legislation.

Schedule 5: Aviation, Maritime and Rail Security

Part 1: Passenger, Crew and Service Information

Amendments to the Immigration Act 1971

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

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

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

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

124. New paragraph 27BA(2) specifies that the information referred to in sub-paragraph (1) may include information about the persons on board the ship or aircraft and information relating to the voyage or flight undertaken.

125. New paragraph 27BA(3) provides that the regulations must specify the classes of ships or aircraft to which they apply, the detail of what information is required, as well as the time by which it must be supplied and the form and manner in which it must be supplied.

126. New paragraph 27BA(4) provides that the regulations may require responsible persons in respect of ships or aircraft to be able to receive communications sent by the Secretary of State or an immigration officer in a specified form and manner relating to the information sent. Such communications may be about the information itself and the form in which it was provided.

127. New paragraph 27BA(5) defines a “responsible person” in respect of a ship or aircraft as the owner or agent, or the captain.

128. New paragraph 27BA(6) provides that the regulations may make different provision for different purposes and may make provision for different types of carrier, journey or person on board.

129. New paragraph 27BA(7) provides that the regulations are subject to the affirmative procedure.

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

131. New paragraph 27BB(2) states that regulations may make provision about how a penalty is to be calculated, the procedure for imposing the penalty, how the penalty will be enforced, and may allow for an appeals process. The regulations may make different provision for different purposes.

132. New paragraph 27BB(3) requires that provision is included in the regulations for a carrier to object to a proposed penalty.

133. New paragraph 27BB(4) prevents a person from being penalised twice (whether by civil or criminal sanctions) for the same failure. Failure to comply with a requirement under Schedule 2 is also a criminal offence under section 27 of the Immigration Act 1971, but if proceedings have been instituted against a person in respect of the failure, a civil penalty may not be imposed. Similarly, a person may be required to provide the same information under other statutory provisions (namely sections 32 and 32A of Immigration, Asylum and Nationality Act 2006 ("IANA 2006")) or under an ATC scheme (see section 22). The effect of new sub-paragraph (4) is that if a person has already been penalised (or proceedings have been instituted against him) for failure to provide the same information, a civil penalty may not be imposed under these regulations. There are various other paragraphs in this schedule making equivalent provision in relation to those other statutory provisions to prevent a person being penalised twice (see the amendments to section 27 of the Immigration Act 1971 inserted by *paragraph 2* and subsection (4) of new section 32B of IANA 2006 inserted by*paragraph 7* and the amendments to section 34 of that Act made by*paragraph 8(3)*). There is also similar provision in section 24(5) as regards civil penalties for breaching an ATC scheme.

134. New paragraph 27BB(5) requires that any penalties paid must go to the Consolidated Fund.

135. New paragraph 27BB(6) provides that the regulations are made by statutory instrument subject to the affirmative procedure.

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

137. *Paragraph 2*amends section 27 of the Immigration Act 1971 to ensure that criminal proceedings may not be instituted against a captain of a ship or aircraft for failure to comply with the requirement to furnish a passenger list or particulars of a member of the crew under *subsection (1)(a)(i)* or a failure to comply with a requirement imposed by paragraphs 27, 27B or 27BA of Schedule 2 under *subsection (1)(b)(iv)* where the person has paid a penalty for failure to comply with the same requirement, by virtue of regulations under paragraph 27BB of Schedule 2 to the Immigration Act 1971, under section 32B of the Immigration, Asylum and Nationality Act 2006 or under section 24 relating to the requirements of an ATC scheme or where proceedings have been instituted against the person under section 34 of IANA 2006.

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

Amendments to the Immigration, Asylum and Nationality Act 2006

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

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

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

142. New section 32A(2) specifies that the information required by *subsection (1)* may include information about the persons on board the ship or aircraft and information relating to the voyage or flight undertaken.

143. New section 32A(3) restricts information that can be required by the regulations to information that is necessary for police purposes (which would cover the prevention, detection, investigation and prosecution of criminal offences and safeguarding national security). The regulations may require information to be given to the police in England and Wales for any police purposes but may only require information to be given to the police in Scotland for purposes that relate to reserved matters or to the police in Northern Ireland for purposes that related to excepted or reserved matters.

144. New section 32A(4) provides that the regulations must specify the classes of ships or aircraft to which they apply, the detail of what information is required, as well as the time by which it must be supplied and the form and manner in which it must be supplied.

145. New section 32A(5) provides that the regulations may require responsible persons to be able to receive communications relating to the information provided, sent by the police, the Secretary of State or an immigration officer in a specified form and manner. This will enable the Secretary of State to specify the functionality of the system a carrier should have to receive those messages. Such a system may, for example, enable the Secretary of State to communicate to a carrier about whether information has been received and whether it is incomplete or inaccurate.

146. New section 32A(6) provides that the regulations may apply generally or to specific cases, may make different provision for different cases or circumstances, and shall be made by statutory instrument subject to the affirmative procedure.

147. New section 32A(7) defines "responsible persons in respect of a ship or aircraft" for the purposes of new section 32A as the owner or agent, or the captain.

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

149. New section 32B(2) states that regulations may in particular make provision about how a penalty is to be calculated; the procedure for imposing the penalty; how the penalty will be enforced, and may allow for an appeals process. The regulations may make different provision for different purposes.

150. New section 32B(3) requires that provision is included in the regulations for a carrier to object to a proposed penalty.

151. New section 32B(4) prevents a person from being penalised twice for the same failure (see above).

152. New section 32B(5) requires any penalties to be paid into the Consolidated Fund.

153. New section 32B(6) provides that the regulations are to be made by statutory instrument subject to the affirmative procedure.

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

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

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

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

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

Amendments to the Aviation Security Act 1982: information and directions

158. *Paragraph 9* of Part 2 of Schedule 5 provides for amendments to information requirement and direction making powers conferred on the Secretary of State by the Aviation Security Act 1982 (“ASA”).

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

160. *Paragraph 9(3)* amends the Secretary of State’s direction making power in section 12 of ASA so as to enable directions to be made to aircraft operators and/or UK aerodrome managers that aircraft may not fly in or into the UK unless specified searches have been carried out.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173. *Paragraph 13(4)*amends article 36, which relates to the service of documents, including directions. The amendments mean that regulations may require a person to accept electronic service in a specified manner and form (such as by means of a specified computer system).

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

PART 5: RISK OF BEING DRAWN INTO TERRORISM ETC

Summary and Background

175. The purpose of the Government's Prevent programme is to stop people becoming terrorists or supporting terrorism. It deals with all kinds of international terrorist threats to the UK. The most significant of these threats is currently from Al Qa'ida-associated groups and from other terrorist organisations in Syria and Iraq. But terrorists associated with the extreme right also pose a continued threat to our safety and security.

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

177. The "Channel" programme in England and Wales is a multi-agency programme which provides tailored support to people who have been identified as at risk of being drawn into terrorism. Through the programme, agencies work together to assess the nature and the extent of this risk and, where necessary, provide an appropriate support package tailored to individual needs.

178. In Scotland the programme is known as "Prevent Professional Concerns". It is the Government's intention that Scottish bodies will be added to the duty in due course by regulations.

179. The purpose of Chapter 2 is to underpin existing Channel arrangements in England and Wales to secure effective co-operative from multi-agency partners so as to ensure the Channel arrangements are as effective as they can be in each local authority area. The sections require local authorities to establish a panel to discuss and, where appropriate, determine the provision of support for people who have been identified by the police as at risk of being drawn into terrorism. The panel must determine what support may be provided and in what circumstances. The sections also establish that panels and their partners must have regard to statutory guidance issued by the Secretary of State. Schedule 7 sets out which bodies are required to cooperate with the panel to allow the panel to make informed decisions and carry out its functions.

Commentary on Sections

Chapter 1: Preventing people being drawn into terrorism

Section 26: General duty on specified authorities

180. *Subsection (1)* provides that a specified authority (listed in Schedule 6 to this Act) must, when exercising its functions, have due regard to the need to prevent people from being drawn into terrorism (the "Prevent" duty).

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

182. *Subsection (3)* caters for the possibility that specified authorities have a range of functions, or act in a variety of capacities, and that it is appropriate that the exercise of only some of those functions is subject to the duty, or that a specified authority is only subject to the duty when acting in a particular capacity. For example, a company might run an independent school and also a separate business. The effect of *subsection (3)* is that the company would be subject to the duty only in its running of the school.

183. *Subsection (4)* provides a number of functions in respect of which the Prevent duty does not apply and *subsection (5)* provides that the reference to a judicial function in *subsection (4)* includes a reference to a judicial function conferred on a person other than a court or tribunal. This is intended to ensure, for example, that where a specified authority is exercising a quasi-judicial function, it is not subject to the Prevent duty.

Section 27: Power to specify authorities

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

185. *Subsection (2)* states that the power to amend Schedule 6 cannot be exercised in order to extend the duty in section 26(1) to the functions and bodies listed in *paragraphs (a) to (j)*.

Section 28: Power to specify authorities: Welsh and Scottish authorities

186. This section provides that where the power in to make regulations which amend the list of specified authorities in section 27(1) is to be used to add Welsh and/or Scottish authorities, or amend or remove an entry that relates to such an authority, the Secretary of State must first consult Welsh and/or Scottish Ministers.

Section 29: Power to issue guidance

187. *Subsection (1)* provides that the Secretary of State may issue guidance to specified authorities about the exercise of the duty in section 26(1).

188. *Subsection (2)* provides that the specified authorities must have regard to the guidance in carrying out the duty in section 26(1).

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

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

191. *Subsection (5)* provides that any guidance is to be brought into force by regulations which are subject to the affirmative resolution procedure.

192. *Subsection (6)* provides that the Secretary of State may revise the guidance.

193. *Subsection (7)* provides that the duty of specified authorities to have regard to the guidance, and the power of the Secretary of State to issue separate guidance in relation to different matters and to particular specified authorities, applies equally in respect of any revised guidance. *Subsection (7)* also provides that regulations which bring revisions of the guidance into force are subject to the affirmative procedure. *Subsection (8)* provides that the consultation obligations must be satisfied when the guidance is being revised, unless the Secretary of State considers that the revisions are insubstantial and do not merit consultation.

194. *Subsection (9)* provides that the Secretary of State must publish the current version of the guidance.

Section 30: Power to give directions: general

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

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

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

Section 31: Freedom of expression in universities etc

198. *Subsection (2)(a)* requires any specified authority which is the proprietor or governing body of a higher and further education institution referred to in *subsection (1)* to have particular regard to the duty to secure freedom of speech imposed by section 43(1) of the Education (No. 2) Act 1986 (if they are subject to that duty), when carrying out the Prevent duty. *Subsection (2)(b)* requires institutions to have particular regard to the importance of academic freedom as described in section 202(2)(a) of the Education Reform Act 1988 (if they are "qualifying institutions" within the meaning of section 202(3) of the 1988 Act) when carrying out the Prevent duty. This section also places a duty on the Secretary of State to have particular regard to the freedom of speech duty and the importance of academic freedom when issuing guidance or when giving directions to these educational bodies.

Section 32: Monitoring of performance: further and higher education bodies

199. This section places a duty on relevant higher and further education bodies, as defined in *subsection (1)*, to provide information to a monitoring authority to allow the monitoring authority to assess the bodies' compliance with the Prevent duty. The monitoring authority may be the Secretary of State or a body to which he or she delegates the monitoring function *(subsection (4)). Subsections (5) to (8)* provide mechanisms for making such delegations. If the person to whom the Secretary of State is to delegate monitoring functions is a person referred to in *subsection (5)*, the delegation can be made by way of notice. If it is to be any other person, the delegation must be made by way of regulations subject to the negative procedure.

Section 33: Power to give directions: section 32

200. This section provides for the Secretary of State to give directions to relevant higher and further education bodies where satisfied that they have failed to comply with the duty to provide information to the monitoring authority. The Secretary of State may, if necessary, seek a mandatory order from the court to enforce any such directions. The Secretary of State must consult the Welsh Ministers before giving directions in relation to institutions in Wales.

Section 34: Enforcement

201. This section provides that where a specified authority fails to carry out the Prevent duty this does not constitute a cause of action under private law. This section is designed to make it clear that the Prevent duty does not create any private law rights for individuals.

Section 35: Chapter 1: interpretation

202. This section defines certain terms used in Chapter 1 of Part 5.

Schedule 6: Specified authorities

203. *Schedule 6* lists the specified authorities that are subject to the Prevent duty.

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

Section 36: Assessment and support: local panels

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

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

206. *Subsection (4)* provides that the panel should prepare a support plan in respect of any identified individual whom the panel considers should be offered support and if that individual (or, if under the age of 18, his or her parent or guardian) consents, the panel must make arrangements for support to be provided in accordance with the plan. The *subsection* also makes provision about keeping the plan under review, revising it, withdrawing support under a plan and carrying out further assessments of the person's vulnerability to being drawn into terrorism.

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

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

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

Section 37: Membership and proceedings of panels

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

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

Section 38: Co-operation

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

Section 39: Power to amend Chapter 2

213. This section contains a power for the Secretary of State to amend the definition of "local authority" and to amend *Schedule 7* by way of regulations. This power could be used (for example) to (a) impose the duty contained in section 36(1) on Scottish local authorities; and (b) amend the list in Schedule 7 of those authorities that are partners of panels subject to the co-operation duty so that Scottish bodies are included. In Scotland the programme equivalent to the Channel programme is known as "Prevent Professional Concerns". In cases where an amendment is needed to omit an entry of a body which has ceased to exist, or to vary an entry in consequence of a change of name or transfer of functions, the regulations are subject to the negative Parliamentary procedure *(subsections (6) and (7))*; all other amendments, including amendments to the definition of "local authority" and the addition of new bodies as panel partners, are subject to the affirmative procedure *(subsection (5))*. Where the power is to be exercised in relation to Welsh or Scottish authorities, the Welsh or Scottish Ministers must be consulted first *(subsections (2) and (3))*. *Subsection (4)* provides that regulations made under this section may amend Chapter 2 to make consequential or supplemental provision.

Section 40: Indemnification

214. This section provides that the Secretary of State may indemnify support providers (that is, any person who provides support to an identified individual under a support plan) against any costs and expenses that the support provider reasonably incurs in performing his or her functions. This power is necessary because support providers find

difficulty in obtaining appropriate insurance and because of this they are less likely to become, or continue to be, support providers.

Section 41: Chapter 2: interpretation

215. This section defines the terms used in sections 36 to 40.

PART 6: AMENDMENTS OF OR RELATING TO THE TERRORISM ACTS

Summary and Background

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

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

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

219. Schedule 7 also contains a power, in paragraph 9, for examining officers to examine goods to which that paragraph applies for the purpose of determining whether they have been used in the commission, preparation or instigation of acts of terrorism. The power to examine goods applies to (a) goods which have arrived in or are about to leave Great Britain or Northern Ireland on a ship or vehicle, and (b) goods which have arrived at or are about to leave any place in Great Britain or Northern Ireland on an aircraft (whether the place they have come from or are going to is within or outside Great Britain or Northern Ireland). Goods are defined in paragraph 9(3) as property of any description, and containers. The provisions in Schedule 8 to this Act contain measures which clarify this goods examination power.

Commentary on Sections

Section 42: Insurance against payments made in response to terrorist demands

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

221. "Insurance contract" is defined for the purposes of the offence and includes reinsurance. The definition follows that contained in International Financial Reporting Standard (IFRS) 4. IFRS is a single set of accounting standards, developed and maintained by the International Accounting Standards Board with the intention of those standards being capable of being applied on a globally consistent basis—by developed, emerging and

developing economies. Consequently, IFRS 4 contains an industry accepted definition of "insurance contract" and extends to reinsurance contracts.

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

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

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

225. *Subsection (2)* provides that where a person is convicted of this new offence the court may order the forfeiture of the amount reimbursed by the insurer to the insured (as part of the contract between them). This *subsection* amends section 23 of the Terrorism Act 2000.

226. *Subsection (3)* provides that the offence will apply in respect of insurance contracts that had been entered into prior to Royal Assent. It also applies in respect of money (such as ransom payments) or other property that had been handed over before Royal Assent, subject to the proviso that it does not apply in relation to a ransom made before 27 November 2014, when the intention to legislate to this effect was announced publicly *(subsection (4))*.

Section 43: Port and border controls: power to examine goods

227. Section 43 introduces Schedule 8.

228. *Paragraph 1* of Schedule 8 to the Act amends Schedule 7 to the Terrorism Act 2000 by inserting five new sub-paragraphs after paragraph 9(2) which expressly provide for the locations in which any examination of goods under paragraph 9 may take place.

229. New sub-paragraph (2A) of paragraph 9 provides that the reference in sub-paragraph (2) (a) to goods about to leave Great Britain or Northern Ireland on a ship includes goods which are held at premises operated by a "sea cargo agent" and are to be delivered to a place in Great Britain or Northern Ireland for carriage on a ship. Paragraph 1(3) of Schedule 8 provides that "sea cargo agent" has the meaning given by section 41(1) of the Aviation and Maritime Security Act 1990.

230. New sub-paragraph (2B) of paragraph 9 provides that the reference in sub-paragraph (2) (b) to goods about to leave any place in Great Britain or Northern Ireland on an aircraft includes goods which are held at premises operated by an "air cargo agent" and are to be delivered to a place in Great Britain or Northern Ireland for carriage by an aircraft. *Paragraph 1(3)* of Schedule 8 provides that "air cargo agent" has the meaning given by section 21F(1) of the Aviation Security Act 1982.

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

232. New sub-paragraph (2C) expressly limits the locations in which the Schedule 7 power can be exercised to (a) ports; (b) air and sea cargo agents' premises; (c) "transit

sheds" (*paragraph 1(3)* of Schedule 8 provides that this term has the meaning given by section 25A of the Customs and Excise Management Act 1979); and (d) any place which the Secretary of State has designated as a place in which goods can be examined under paragraph 9 of Schedule 7.

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

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

235. *Paragraph 1(4)* of Schedule 8 ensures there are powers for examining officers to enter premises operated by an air or sea cargo agent, transit sheds, and designated examination locations.

236. *Paragraph 2* of Schedule 8 ensures that the protection from interception afforded to postal communications in the Regulation of Investigatory Powers Act 2000 ("RIPA") does not restrict the use of the paragraph 9 power in respect of postal packets. The section inserts a new subsection (3B) into section 3 of RIPA. This makes it clear that there is lawful authority for examinations of postal packets carried out under Schedule 7.

237. *Paragraph 3* of Schedule 8 has the effect of ensuring that in cases where examining officers examine postal items under paragraph 9 of Schedule 7, this does not infringe the "inviolability of mails" principle in section 104(3) of the Postal Services Act 2000 (the principle that mail-bags, packets in the post and their contents, which are not the property of the Crown, enjoy the same immunity from examination, seizure or detention, as if they were the property of the Crown).

PART 7: MISCELLANEOUS AND GENERAL

Summary and Background

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

Commentary on Sections

Section 44: Reviews of operation of Part 1 etc

239. This section makes changes to the statutory remit of the Independent Reviewer of Terrorism Legislation to include: Part 1 of the Anti-terrorism, Crime and Security Act 2001, and Part 2 of that Act insofar as the power to make a freezing order is used in cases relating to terrorism; the Counter-Terrorism Act 2008; and Part 1 of this Act. This section also provides that the Independent Reviewer of Terrorism Legislation must notify the Secretary of State at the beginning of each calendar year of any matters within this section which he intends to review in the following 12 months and requires him to provide a report on the outcome of any such review to the Secretary of State as soon as reasonably practicable after its conclusion, who will in turn lay the report before Parliament.

Section 45: Reviews of operation of other terrorism legislation

240. This section makes equivalent changes to those contained in section 44 by providing that for matters falling within the Independent Reviewer's remit contained in other legislation (section 36 of the Terrorism Act 2006; section 31 of the Terrorist Asset-Freezing etc Act 2010; section 20 of the Terrorism Prevention and Investigation Measures Act 2011), the Independent Reviewer must notify the Secretary of State at the beginning of each calendar year of any matters which he intends to review in the following 12 months. The Independent Reviewer must provide a report on the outcome of any such review to the Secretary of State as soon as reasonably practicable after its conclusion, who will in turn lay the report before Parliament. However, the Terrorism Act 2000, which remains the UK's principal piece of counter-terrorism legislation and contains a number of fundamental provisions, such as the definition of terrorism, continues to be subject to an annual reporting requirement.

Section 46: Privacy and Civil Liberties Board

241. Section 46 provides the Secretary of State with a power to make regulations to create a body which will support the Independent Reviewer of Terrorism Legislation. The first set of regulations made under this power, and any subsequent set which amend, repeal or revoke primary legislation, are subject to affirmative resolution; other regulations are subject to the negative Parliamentary procedure. *Subsection (2)* provides that the body will be known as the "Privacy and Civil Liberties Board". Regulations made under this power may, amongst other things, provide for the details of the Board's functions, membership, staffing arrangements, its organisation and procedures *(subsection (3))*. Regulations brought forward under this section must provide for the Secretary of State to consider recommendations from the Independent Reviewer before appointing members of the Board, and must specify that the Board will operate under the direction and control of the Independent Reviewer, who will chair it *(subsection (4))*.

Section 47: Review of certain naturalisation decisions by Special Immigration Appeals Commission

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

243. Section 47 therefore amends section 2D of the Special Immigration Appeals Commission Act 1997 (jurisdiction: review of certain naturalisation and citizenship decisions), by adding at subsection (1)(a)(i) of section 2D of that Act, the relevant section of the British Nationality Act 1981 (BNA 1981) relating to applications to naturalise as a BOTC, to the existing list of citizenship decisions that may be certified.

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

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

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

247. Section 47 seeks to address this gap by adding decisions with regard to applications to naturalise as a BOTC under section 18 of the BNA 1981, to the existing list of citizenship application types that may be certified by the Secretary of State.

Section 48: Power to make consequential provision

248. Section 48 enables the Secretary of State, by regulations, to make provision consequential on the Act including consequential amendments to other enactments. Any such regulations that amend, repeal or revoke anything in primary legislation would be subject to the affirmative resolution procedure. Otherwise, the negative resolution procedure applies. The Secretary of State is required to consult the relevant devolved administration before making regulations under this section if any provision in those regulations would fall within the legislative competence of the Scottish Parliament, National Assembly for Wales or the Northern Ireland Assembly, if included in an Act of that Parliament or those Assemblies.

COMMENCEMENT DATES

249. Chapter 1 of Part 1 comes into force the day after Royal Assent.

250. Sections 36 to 38 and 40 and sections 44 to 46 come into force two months after Royal Assent.

251. Part 3, section 22(10), paragraphs 12 to 14 of Schedule 5 and section 25 so far as relating to those paragraphs, and sections 26 and 30, section 31(2) and (4) and sections 32 to 34 come into force by regulations made by statutory instrument.

252. The other provisions come into force on the day of Royal Assent.

HANSARD REFERENCES

253. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	***Date***	***Hansard reference***
House of Commons		

Stage	***Date***	***Hansard reference***
Introduction	26 November 2014	Vol. 588 Col. 922
Second Reading	2 December 2014	Vol. 589 Cols. 207-274
Committee	9, 15 and 16 December 2014	Vol. 589 Cols. 784-838, 1173-1234, 1305-1373
Report and Third Reading	6 and 7 January 2015	Vol. 590 Cols. 164-238, 317-354
House of Lords		
Introduction	7 January 2015	Vol. 758 Col. 407
Second Reading	13 January 2015	Vol. 758 Cols. 661-772
Committee	20, 26 and 28 January 2015	Vol. 758 Cols. 1207-1278, 1293-1318; Vol. 759 Cols. 12-75, 90-100, 205-318
Report	2 and 4 February 2015	Vol. 759 Cols. 461-517, 666-713, 726-774
Third Reading	9 February 2015	Vol. 759 Cols. 1024-1035
Ping-pong: House of Commons	10 February 2015	Vol. 592 Cols. 728-746
Royal Assent	12 February 2015	House of Lords: Vol. 759 Col. 1353
		House of Commons: Vol. 592 Cols. 1000-1001

VERSIONS OF THE BILL

254. The Counter-Terrorism and Security Bill was amended a number of times during its passage through Parliament. These versions of the Bill are available from the Parliament website.

Bill 127 2014-2015 as introduced to the House of Commons http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0127/15127.pdf
Bill 142 2014-2015 as amended in Commons committee http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0142/15142.pdf
HL Bill 75 2014-2015 as introduced to the House of Lords http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0075/15075.pdf
HL Bill 92 2014-2015 as amended in Lords Committee http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0092/15092.pdf
HL Bill 93 2014-2015 as amended on Lords Report http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0093/15093.pdf