

# **TERRORISM ACT 2006**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### *Definitions*

16. The Act relies on a number of definitions that appear in the TACT. The definition of terrorism appears in section 1 of the TACT. The definition covers the use or threat of action that meets the three elements set out in section 1(1). The first of the elements is that the action must fall into section 1(2). An action falls in section 1(2) if it involves serious violence against a person or serious damage to property; it endangers a person's life (but this does not include the life of the person committing the action); it creates a serious risk to the health and safety of the public or a section of the public; or it is designed to seriously interfere with or seriously to disrupt an electronic system. The second element is that the use or threat is either designed to influence the government or is designed to intimidate the public or a section of the public. Section 34 of the Act amends this element to include cases where the use or threat is designed to influence an international governmental organisation. The second element does not have to be satisfied if the use or threat falling into subsection (2) involves the use of firearms or explosives (section 1(3)). Explosives and firearms are defined in section 121 of the TACT. The third element is that the threat is made for the purpose of advancing a political, religious or ideological cause.
17. Section 1(4) of the TACT makes it clear that the definition of terrorism is not limited to things taking place in the UK or related to things in the UK. Action is defined in section 1(4)(a) as including actions outside the UK. Section 1(4)(b) provides that a reference in the definition to a person or property means a person or property wherever he or it is situated. Section 1(4)(c) makes it clear that the public can be the public of a country other than the UK. Section 1(4)(d) provides that the reference to government is not limited to the central government of the UK but can also mean a government of part of the UK (such as of Scotland) and a foreign government.
18. Property is defined in section 121 of the TACT as including property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property.
19. The Act also makes use of the term acts (or act) of terrorism. Act and action are both defined in section 121 of the TACT as including an omission. Section 1(5) makes it clear that, as well as including an act that falls under the definition in section 1, an act is also for the purposes of terrorism if it is taken for the benefit of a proscribed organisation. Section 20(2) of the Act makes it clear that acts (or act) of terrorism as used in the Act includes an act taken for the purposes of terrorism and so includes an act taken for the benefit of a proscribed organisation.

#### *Section 1 – Encouragement of terrorism*

20. **Section 1** creates an offence of encouragement of acts of terrorism or Convention offences. The offence has been introduced to implement the requirements of Article 5 of the Council of Europe Convention on the Prevention of Terrorism (“the Convention”).

*These notes refer to the Terrorism Act 2006 (c.11)  
which received Royal Assent on 30 March 2006*

This requires State parties to have an offence of 'public provocation to commit a terrorist offence'. This new offence supplements the existing common law offence of incitement to commit an offence.

**Subsection (1)**

21. The offence in section 1 is concerned with the publication of statements and **subsection (1)** sets out the type of statements to which it applies. These are statements that are likely to be understood by some or all of the members of the public to whom they are published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences.

**Subsection (2)**

22. **Subsection (2)** sets out the conduct and mental element of the offence. Article 5 of the Convention requires parties to have an offence of public provocation to commit a terrorist offence. Terrorist offence is defined in Article 1 of the Convention as any offence within the scope of, or defined in, one of the treaties listed in the Appendix to the Convention. The Appendix lists a number of treaties the offences from which have been translated into UK law through legislation, as a consequence the concept of terrorist offence in Article 5 (and Article 1) of the Convention becomes the concept of Convention offence in the Act. Convention offences are set out in Schedule 1 to the Act which consists of a list of the UK provisions implementing the treaties listed in the Appendix to the Convention.
23. The new offence is committed if a person publishes a statement (as defined in subsection (1)) or causes another to publish such a statement and he has the necessary *mens rea*. The *mens rea* is that, at the time of publishing or causing to publish, he either intends members of the public to be directly or indirectly encouraged or otherwise induced, by the statement to commit, prepare or instigate acts of terrorism or Convention offences, or he is reckless as to whether members of the public will be so directly or indirectly encouraged by the statement. A number of definitions relating to this offence, including the definition of act of terrorism, publish, statement and public, are set out in section 20 of the Act. The effect of those definitions is set out in paragraphs 16-19 and 94 and 95 of these notes.

**Subsection (3)**

24. **Subsection (3)** provides that indirect encouragement of terrorism includes a statement that glorifies the commission or preparation of acts of terrorism or Convention offences but only if members of the public could reasonably be expected to infer that what is being glorified in the statement is being glorified as conduct that should be emulated by them in existing circumstances. Glorification is defined in section 20(2) as including praise or celebration. Section 20(7) clarifies that references to conduct that should be emulated in existing circumstances includes references to conduct that is illustrative of a type of conduct that should be so emulated. For example, if it was reasonable to expect members of the public to infer from a statement glorifying the bomb attacks on the London Underground on 7 July 2005 that what should be emulated is action causing severe disruption to London's transport network, this will be caught.

**Subsection (4)**

25. **Subsection (4)** specifically provides that when the questions of how a statement is likely to be understood, and what members of the public might reasonably infer from it, are determined, regard should be had to both the contents of the statement as a whole, and the circumstances and manner of its publication.

### **Subsection (5)**

26. **Subsection (5)** sets out that the statement, or how it is likely to be understood, need not relate to a specific act of terrorism or Convention offence. It also sets out that an offence is committed whether or not any person is actually encouraged or induced to commit, prepare or instigate an act of terrorism or Convention offence. It follows from this that it is not necessary in order for the offence to be committed for an act of terrorism or a Convention offence actually to take place.

### **Subsection (6)**

27. **Subsection (6)** sets out a defence to the offence created by this section. It is a defence for a person accused of the offence, where it has not been proved that he intended the statement to encourage or otherwise induce the commission, preparation, or instigation of acts of terrorism or Convention offences, to show that the statement published neither expressed his views, nor had his endorsement and that it was clear in all the circumstances of the statement's publication that it was not his view and did not have his endorsement. The defence is intended, for example, to cover news broadcasters. However, a person will not be able to take advantage of this defence if he is deemed to endorse a statement because he has failed to comply with a notice issued under section 3 (see paragraphs 39 to 45 of these notes).

### **Subsection (8)**

28. **Subsection (8)** provides a transitional provision in respect of the period before the commencement of section 154(1) of the [Criminal Justice Act 2003 \(c.44\)](#). At the moment a Magistrates' Court can only give a penalty of up to six months' imprisonment. Once section 154(1) is in force this will increase to 12 months' imprisonment. Subsection (7), which sets out the penalties for the offence, is drafted as if section 154 is in force but as it is not in force a provision is needed to make it clear that, until such time as it is in force, the Magistrates' Court only has its existing powers to give a penalty of imprisonment.

## ***Section 2 – Dissemination of terrorist publications***

29. **Section 2** creates offences relating to the sale and other dissemination of books and other publications, including material on the internet, that encourage people to engage in terrorism, or provide information that could be useful to terrorists.

### **Subsection (1)**

30. **Subsection (1)** focuses on the mental element of the offence. This is an offence which must be committed intentionally or recklessly. For an offence to be committed, it is necessary for an individual to carry out any of the actions set out in **subsection (2)**, which outlines various methods of dissemination, and for him either to have an intention that an effect of his conduct will be a direct or indirect encouragement or other inducement to terrorism, an intention that an effect of his conduct will be the provision of assistance in the commission or preparation of acts of terrorism, or for him to be reckless as to whether his conduct has one of these two specified effects.

### **Subsection (2)**

31. **Subsection (2)** provides the conduct that will amount to an offence under section 2. The conduct is: distributing or circulating a terrorist publication; giving, selling, or lending a terrorist publication; offering a terrorist publication for sale or loan; providing a service to others that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of gift, sale, or loan; transmitting the contents of a terrorist publication electronically; and possessing a terrorist publication with a view to making it available in any of the ways listed. This means that the offence will cover not only bookshops but also those that sell books and publications over the internet whether the

publication is in hard copy or electronic. It will also cover libraries and the distribution of leaflets and flyers.

### **Subsection (3)**

32. **Subsection (3)** sets out the definition of terrorist publication. A publication will be considered a terrorist publication if it meets one of two tests. The first test is if matter contained in it is likely to be understood by some or all of the persons to whom it is or may become available as a consequence of the conduct in subsection (2) as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism. The second test is if it contains any matter which is likely to be useful in the commission or preparation of such acts and it is likely to be understood by some or all of the persons to whom it is or may become available as being contained in the publication, or made available to them, wholly or mainly for the purposes of being so useful to them. The first reason for a book or other publication being a terrorist publication relates to the new offence under section 1. In either case, only a small part of a publication needs to satisfy the test for the publication to be a terrorist publication. As the whole publication will be a terrorist publication if a small part of it satisfies the test this means that the whole publication can be seized under the powers set out in section 28 and Schedule 2 (which provide for search, seizure and forfeiture of terrorist publications). However, in relation to the defence in subsection (9) of section 2, in order to establish part (a) of the defence, the defendant need only show that the part of a publication which satisfies the test did not express his views or have his endorsement.

### **Subsections (4) and (5)**

33. **Subsection (4)** sets out that, as in section 1, indirect encouragement of terrorism includes glorification of terrorism, so long as the person who understands the statement to be indirect encouragement could reasonably be expected to infer that the conduct that is glorified is glorified as conduct that should be emulated by him in existing circumstances. **Subsection (5)** provides that whether or not a publication is a terrorist publication must be determined at the time of the particular conduct in question, and having regard to the content of the publication as a whole and the circumstances in which the particular conduct occurred. This means that account can be taken of the nature of the bookseller or other disseminator of the publication.

### **Subsection (6)**

34. **Subsection (6)** sets out that references to an effect of a person's conduct in relation to a terrorist publication includes references to an effect of the publication on one or more of the persons to whom it is or may become available as a consequence of that conduct. This means that the effect of a person holding a publication intending to disseminate it (for example, by offering it for sale) will include the effect on the audience to whom it is intended it will be made available by a later act of dissemination (i.e. the sale itself). This is intended to cover the fact that if a person only, for example, holds a publication with the intention of disseminating it, the effect of that conduct is not to encourage terrorism or to be useful to terrorists, because only once the publication is disseminated can it have one of those effects.

### **Subsections (7) and (8)**

35. **Subsection (7)** provides that a terrorist publication need not encourage or induce, or be useful for, the commission, preparation, or instigation of a specific act of terrorism, but may instead be an encouragement or inducement for, or be useful for, acts of terrorism in general. **Subsection (8)** provides that whether or not an individual actually is encouraged or induced to commit, prepare, or instigate terrorist acts, or makes use of the publication in the commission or preparation of such acts, is irrelevant to the question of whether or not an offence has been committed.

### **Subsections (9) and (10)**

36. **Subsection (9)** provides a defence to the offence in section 2. The defence is only available if it has not been proved that the defendant engaged in conduct with the intention that his conduct would encourage terrorism and if the publications in question are terrorist publications by virtue of containing material that encourages terrorism, not ones that are useful for the purposes of terrorism (**subsection (10)**). The defendant can take advantage of the defence if he can show that the material that encourages terrorism did not express his views or have his endorsement and it was clear in all the circumstances that it did not express his views or have his endorsement. A defendant will not be able to rely on the defence in subsection (9) if he is deemed to have endorsed the terrorist material in a publication because he has failed to comply with a notice issued under section 3 (see paragraphs 39 to 45 of these notes).

### **Subsection (12)**

37. **Subsection (12)** provides a transitional provision in respect of the period before the commencement of section 154(1) of the Criminal Justice Act 2003. At the moment a Magistrates' Court can only give a penalty of up to six months' imprisonment. Once section 154(1) is in force this will increase to 12 months' imprisonment. Subsection (11), which sets out the penalties for the offence, is drafted as if section 154 is in force but as it is not in force a provision is needed to make it clear that, until such time as it is in force, the Magistrates' Court only has its existing powers to give a penalty of imprisonment.

### **Subsection (13)**

38. **Subsection (13)** defines publication for the purposes of section 2 as an article or record of any description which contains matter to be read, matter to be listened to, or matter to be looked at or watched. This means that as well as covering books the section will also cover, amongst other things, films and videos (with or without sound), cassette tapes, electronic books, material contained on CD-ROMs and photographs. This definition of publication is different from that provided for in section 20 of the Act. Article and record are defined in section 20(2) and (8). Article includes anything for storing data such as a CD-ROM. Record means anything that is not an article, including a temporary electronic record that only exists for the purpose of, and during the transmission of, its contents. Under section 20(8) if there is a reference to what is contained in an article or record this includes anything embodied or stored on or in it and anything that may be reproduced from it.

### ***Section 3 – Application of sections 1 and 2 to internet activity etc.***

39. Under sections 1 and 2 a person has a defence to the offences in those sections if he can show amongst other things that a statement or publication did not express his views and did not have his endorsement (see sections 1(6) and 2(9)). The effect of section 3 is to deem a person providing or using an electronic service to have endorsed a statement if he has received a notice under section 3 and he has failed to comply with it. If the person is accused of an offence under section 1 or 2 then the effect of section 3 is that he cannot take advantage of the defence in sections 1(6), or 2(9) respectively.
40. **Section 3** contains a number of references to “publishing”, “records”, “article” and “statement”, the definitions of which are contained in section 20 (Interpretation of Part 1).

### **Subsection (1)**

41. **Subsection (1)** applies the section to services provided electronically. Subsection (1) (a) relates to statements that are published under section 1. Subsection (1)(b) relates to conduct that amounts to an offence under section 2. In both cases the publishing or

conduct that amounts to the offence must occur in the course of, or in connection with the provision or use of an electronic service.

### **Subsection (2)**

42. **Subsection (2)** provides that any statement or conduct in question is regarded as having the endorsement of a person if he has been given a notice under **subsection (3)**, two working days or more have elapsed since the notice was given, and the relevant person has failed without a reasonable excuse to comply with the notice. The final part of this test specifically provides that if a person has a good reason for not complying with the notice he will not be caught by section 3.

### **Subsection (3)**

43. **Subsection (3)** relates to the form of a notice under section 3. A notice can only be given by a constable and that constable must have formed the opinion that the statement, article or record concerned is unlawfully terrorism-related. Those things are unlawfully terrorism-related if they are likely to be understood as a direct or indirect encouragement or other inducement to acts of terrorism, or Convention offences, by any one or more of the persons to whom it is or may become available; or if the article or record contains information that is likely to be useful to any one or more of those persons in the commission or preparation of acts of terrorism, and is in a form or context as may be likely to be understood by those persons as being wholly or mainly for such a purpose (**subsection (7)**). As in sections 1 and 2, **subsection (8)** provides that indirect encouragement of terrorism includes glorification of terrorism, but only if it can be understood as a suggestion that what is being glorified is glorified as conduct to be emulated in existing circumstances.
44. A notice issued under this section must declare that the statement, article, or record in question is unlawfully terrorism-related in the opinion of the constable. The notice must require the relevant person (for example, a webmaster) to ensure that the statement, article or record is removed from public view or amended to ensure that it is no longer unlawfully terrorism-related. The notice must warn the person that he has two working days to comply with the notice, and that failure to do so will lead to that person being regarded as having endorsed the statement, article or record. Working day is defined in **subsection (9)** as any day that is not a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday within the meaning of the [Banking and Financial Dealings Act 1971 \(c. 80\)](#) in any part of the UK. This final part of the definition means that a bank holiday in any part of the UK will not be a working day for the purposes of the provisions in any part of the UK. The notice must also explain how the relevant person may be liable if the statement, article or record becomes available to the public again, following compliance with the notice. This final element relates to repeat statements which are covered in subsections (4) to (6).

### **Subsections (4) to (6)**

45. **Subsections (4), (5) and (6)** deal with the situation in which a person is given a notice, he takes down the offending statement and then another statement that is the same or very similar is posted again. These are referred to as repeat statements. In such a situation it may be difficult to tell if the statement is the statement to which the notice relates or a new one. A mechanism is needed to ensure that a person is only liable for statements that he knows about. **Subsection (4)** provides that the person against whom the notice was issued will be regarded as having endorsed repeat statements but this is subject to subsections (5) and (6). **Subsections (5) and (6)** provide that a person is not deemed to endorse a repeat statement if he has taken every reasonable step to prevent repeat statements becoming available to the public, and he has taken every reasonable step to ascertain if a repeat statement is available to the public; and he is not aware that the repeat statement had been published or he was aware that it had been published but he has taken every reasonable step to ensure it is removed or modified.

#### **Section 4 – Giving of notices under s.3**

46. This section sets out the procedure for the giving of notices under section 3.

##### **Subsection (1)**

47. **Subsection (1)** sets out that, other than in the cases dealt with by subsections (2) to (4) of section 4, a notice may be given to a person only by delivering it to him in person, or by sending it, by means of recorded delivery, to him at his last known address.

##### **Subsections (2) to (4)**

48. **Subsection (2)** sets out the manner of giving a notice to a body corporate. **Subsection (3)** sets out the manner of giving a notice to a firm. **Subsection (4)** sets out the manner of giving a notice to an unincorporated body or association.

##### **Subsection (7)**

49. **Subsection (7)** sets out that the time that a notice is given will be taken as the time of delivery of that notice, if given in person, or the time recorded as the time of delivery, if sent by post. This provides the time that is relevant for the purposes of section 3(2)(b).

#### **Section 5 – Preparation of terrorist acts**

50. **Section 5** creates an offence of the preparation of terrorist acts. This offence adds to existing common law offences of conspiracy to carry out terrorist acts, and attempting to carry out such acts. At the moment the law does not cover preparatory acts: the offence of attempt provides that the acts done must be more than merely preparatory and the offence of conspiracy provides that an agreement to commit an offence must have occurred. In addition both offences require that a specific offence is attempted or planned rather than just a general intention to carry out acts that amount to terrorism. Under the new offence created by this section acts of preparation with the relevant intention will be caught, for example if a person possesses items that could be used for terrorism even if not immediately and that person has the necessary intention he will be caught by the offence.

##### **Subsections (1) and (2)**

51. **Subsection (1)** creates an offence of preparing to commit or assist others to commit one or more acts of terrorism with the intent of committing or assisting others to commit such acts. **Subsection (2)** states that this is an offence whether or not there are specific plans, or solely an intention to carry out such acts generally.

#### **Section 6 – Training for terrorism**

52. This section implements Article 7 of the Convention. Article 7.2 requires parties to create an offence of training for terrorism. Training for terrorism is defined in Article 7.1. Article 7 is already partially implemented by section 54 of the TACT, this new offence covers matters that are not already dealt with by section 54. Section 54 relates to training in the use or making of firearms, explosives and chemical, biological and nuclear weapons. Convention offences as referred to in this section are set out in Schedule 1 to the Act.

##### **Subsections (1) and (2)**

53. These subsections create a new offence of giving or receiving training in certain skills, as defined in subsection (3). **Subsection (1)** provides that in respect of giving training, an offence is committed if the person giving it knows that the person receiving training intends to use the skills he acquires for, or in connection with, the commission or preparation of acts of terrorism or Convention offences, or assisting others in the

commission or preparation of such acts or offences. **Subsection (2)** provides that in respect of receiving training an offence is committed if a person receives instruction in one of a number of skills listed in **subsection (3)** and, at the time of the training, he intends to use the skills acquired for, or in connection with, the commission or preparation of acts of terrorism or Convention offences, or assisting others in the commission or preparation of such acts or offences.

### **Subsection (3)**

54. **Subsection (3)** defines the skills in which it is an offence to give or receive training under this section. The skills are split into three categories, the first is defined as the making, handling, or use of a hazardous or noxious substance. An example of this would be how to make a bomb to disperse a virus. The second is defined as the use of any method or technique for the doing of anything, other than things falling into the first category, that is capable of being done for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or Convention offence, or with assisting the commission or preparation of such acts. An example of this would be a technique for causing a stampede in a crowd. The third is defined as the design or adaptation, for the purposes of terrorism, or in connection with the commission, preparation or instigation of an act of terrorism or Convention offence, of any method or technique for doing anything. An example of this third category would be giving instructions about the places where a bomb would cause maximum disruption.

### **Subsection (4)**

55. **Subsection (4)** provides that for the purposes of this section it does not matter how many people training is provided to. It also sets out that the person receiving training need not intend to commit specific acts of terrorism or Convention offences, rather than such acts or offences in general, and that he does not need to be intending to provide assistance to a specific person, rather than persons whose identities are not yet known, in the commission of any such act or offence.

### **Subsection (6)**

56. **Subsection (6)** provides a transitional provision in respect of the period before the commencement of section 154(1) of the Criminal Justice Act 2003. At the moment a Magistrates' Court can only give a penalty of up to six months' imprisonment. Once section 154(1) is in force this will increase to 12 months' imprisonment. Subsection (5), which sets out the penalties for the offence, is drafted as if section 154 is in force but as it is not in force a provision is needed to make it clear that, until such time as it is in force, the Magistrates' Court only has its existing powers to give a penalty of imprisonment.

### **Subsection (7)**

57. **Subsection (7)** defines "noxious substance", and "substance", for the purpose of the offence of terrorist training. The definition of noxious substance includes the definition of dangerous substance in Part 7 of the ATCSA. The definition of dangerous substance is included in section 58 of that Act. Section 58 gives effect to Schedule 5 of the ATCSA, which lists a number of pathogens and toxins. A dangerous substance means anything which consists of or includes a substance listed in Schedule 5 or anything which is infected or otherwise carries any such substance.

## ***Section 7 – Powers of forfeiture in respect of offences under s.6***

58. This section provides for powers of forfeiture in respect of items considered by the court to be connected with the carrying out of an offence under section 6. This could, for example, include various noxious substances and equipment designed for the handling, and production, of such substances. **Subsection (1)** gives a power to the court to order



the forfeiture, on conviction of any individual for an offence under section 6, of any items the court considers to have been in the possession of the person convicted for purposes connected with the offence. **Subsection (2)** sets out that before such an order can be made, the court must give any person, in addition to the person convicted, a chance to be heard if they claim that they are the owner of the items. **Subsection (3)** ensures that an order of this kind can only come into force once there is no further possibility of the order being varied or set aside on appeal. **Subsections (4) and (5)** provide that the court may, in the case of an order for forfeiture being made under **subsection (1)**, make any other provision it sees as necessary to give effect to the forfeiture, including provision about retention, handling, destruction and other disposal of what is forfeited.

### ***Section 8 – Attendance at a place used for terrorist training***

59. **Section 8** creates a new offence of attending a place used for terrorist training. This adds to offences relating to terrorist training contained in Section 54 of the TACT, and section 6 of this Act. The offence will apply whether the place is inside the United Kingdom, or abroad. Although section 8 refers to Convention offences (as defined in Schedule 1) it does not implement a provision in the Convention.

#### **Subsections (1) to (3)**

60. **Subsection (1)** creates an offence of attending any place in the UK or abroad at which terrorist training is taking place. Terrorist training for these purposes is defined by reference to the kind of training that may be given under the offence in section 6(1) of this Act, and those offences in section 54(1) of the TACT (which relates to weapons training). For an offence to have been committed, all or part of the training in such a place would need to have been provided for purposes connected with terrorism or Convention offences. It is also an element of the offence that the offender either knows or believes that training for those purposes is taking place or that a person attending the place throughout the period of that person's attendance could not have reasonably failed to understand this (**subsection (2)**). **Subsection (3)** provides that the person concerned need not have received training himself in order for the offence to have been committed. It also sets out that the offence occurs whether the training is for a specific act of terrorism or Convention offence, or such acts or offences in general.

#### **Subsection (5)**

61. **Subsection (5)** provides a transitional provision in respect of the period before the commencement of section 154(1) of the Criminal Justice Act 2003. At the moment a Magistrates' Court can only give a penalty of up to six months' imprisonment. Once section 154(1) is in force this will increase to 12 months' imprisonment. Subsection (4), which sets out the penalties for the offence, is drafted as if section 154 is in force but as it is not in force a provision is needed to make it clear that, until such time as it is in force, the Magistrates' Court only has its existing powers to give a penalty of imprisonment.

### ***Section 9 – Making and possession of devices or materials***

62. The offences in **section 9, section 10 and section 11** are needed in order for the UK to ratify the UN Convention for the Suppression of Acts of Nuclear Terrorism, which the UK signed in September 2005. The new offences which this section and sections 10 and 11 create relate in particular to the use, possession and making of radioactive devices, particularly radioactive material dispersal devices and radiation emitting devices, and use and possession, or the threat of use or possession, of radioactive materials or nuclear facilities for terrorist purposes.

### **Subsections (1) and (2)**

63. **Subsection (1)** of section 9 makes it an offence to make or possess a radioactive device or to possess radioactive material with the intention of using the device or material in the course of, or in connection with, the commission or preparation of an act of terrorism, or for the purposes of terrorism. It is also an offence if the intention is to make the device or material available to be used in such a way. **Subsection (2)** sets out that for the purposes of the offence being committed, it does not matter whether an intention relates to a specific act of terrorism, or acts of terrorism in general.

### **Subsections (4) and (5)**

64. The definitions in **subsections (4) and (5)** and other definitions in sections 10 and 11 are based on Article 1 of the UN Convention that these sections are intended to implement. “Radioactive device” is defined in **subsection (4)** as either a nuclear weapon or nuclear explosive device; a radioactive material dispersal device; or any other radiation emitting device. This definition can include (under “radioactive material dispersal device”) a “dirty bomb” in which an explosive causes radioactive material to disperse, with the effect that the radiation causes danger.
65. **Subsection (4)** defines “radioactive material” as nuclear material, or any other radioactive substance which contains nuclides that undergo spontaneous disintegration in a process accompanied by the emission of one or more types of ionising radiation and, due to its radiological or fissile properties, it is capable of causing serious bodily injury or damage to property, endangering life or creating a serious risk to public health and safety. Nuclear material is defined in **subsection (5)** as having the same meaning as in the [Nuclear Material \(Offences\) Act 1983 \(c.18\)](#). Section 6 of that Act defines such material as nuclear material, within the meaning of the Convention on Physical Protection of Nuclear Material, which is used for peaceful purposes. The definition of nuclear material in Article 1(A) and (B) of that Convention is set out in the Schedule to the 1983 Act. It covers particular types of plutonium and uranium, such as uranium-233 and any material containing such uranium or plutonium. “Device” is defined in **subsection (5)** to include machinery, equipment, appliances, tanks, containers, pipes and conduits, whether or not these are fixed to the land.

## ***Section 10 – Misuse of devices or material and misuse and damage of facilities***

### **Subsections (1) and (2)**

66. **Subsection (1)** creates an offence of using radioactive material or a radioactive device in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism. **Subsection (2)** creates a similar offence of using or damaging a nuclear facility in a manner that releases radioactive material or creates or increases the risk that such material will be released, in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism.

### **Subsections (4) and (5)**

- “67 **Subsections (4) and (5)** are definitions provisions. Nuclear facility means a nuclear reactor, including a reactor installed in or on a transportation device, or a plant or conveyance being used for the production, storage, processing or transport of radioactive material. Nuclear reactor and transportation device are both defined in subsection (5). Nuclear reactor is defined by reference to the [Nuclear Installations Act 1965 \(c.57\)](#). Section 26 of that Act provides that the term means any plant designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons. Transportation device means any vehicle or any space object. Vehicle is defined in section 121 of the TACT as including aircraft, hovercraft, train or vessel. Space object is defined by reference to the [Outer Space Act 1986 \(c.38\)](#). The definition of space object

appears in section 13(1) of that Act and is defined to include not only the object itself, but also its component parts, its launch vehicle and the component parts of that vehicle.

### ***Section 11 – Terrorist threats relating to devices, materials or facilities***

#### **Subsection (1)**

68. **Subsection (1)** makes it an offence in the course of or in connection with the commission of an act of terrorism, or for the purposes of terrorism, to demand the supply of a radioactive device or of radioactive material, or that a nuclear facility or access to a nuclear facility is made available, if this demand is supported with a threat to take action if the demand is not met. The offence only takes place if the threat is credible, in that the circumstances and manner of the threat are such that it is reasonable for the person to whom it is made to assume there is a real risk of the threat being carried out if the demand is not met.

#### **Subsection (2)**

69. **Subsection (2)** makes it an offence to make one of a number of threats, listed in **subsection (3)**, in the course of or in connection with the commission of an act of terrorism, or for the purposes of terrorism. Again it is an element of the offence that the circumstances and manner of the threat are such that it is reasonable for the person to whom it is made to assume there is a real risk of the threat being carried out if the demand is not met.

#### **Subsection (3)**

70. **Subsection (3)** provides those threats which it will be an offence to make under subsection (2). It will be an offence to make a threat to use radioactive material; to use a radioactive device; or to use or damage a nuclear facility in a manner that releases radioactive material, or creates or increases a risk that such material will be released.

### ***Section 12 - Trespassing etc. on nuclear sites***

71. This section amends sections 128 and 129 of the Serious Organised Crime and Police Act 2005 ("the SOCAP") to extend those sections to include nuclear sites. Section 128 covers England, Wales and Northern Ireland and section 129 covers Scotland. They make it an offence to enter or to be on a designated site as a trespasser. The maximum penalty for the offence under these provisions is, in England and Wales, 51 weeks imprisonment, a fine up to level 5 on the standard scale, or both, in Scotland, 12 months imprisonment, a fine up to level 5 on the standard scale, or both and in Northern Ireland, 6 months imprisonment, a fine up to level 5 on the standard scale or both. The reference to 51 weeks in relation to England and Wales is subject to a transitional provision as set out in section 175(3) of the SOCAP, which provides that, in relation to offences committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference to 51 weeks is to be read as a reference to 6 months.

#### **Subsection (2)**

72. **Subsection (2)** amends sections 128 and 129 of SOCAP to refer to protected site rather than designated site.

#### **Subsection (3)**

73. **Subsection (3)** amends section 128 of the SOCAP so that it applies to protected sites. A protected site is either a designated site (the type of site that section 128 already applied to) or a nuclear site. A nuclear site is defined within section 128 (as amended) and as a consequence there is no need for the Secretary of State to make an order defining a nuclear site as there is with a designated site. A nuclear site is defined, in new subsection (1B) of section 128, as so much of any premises for which a nuclear site

licence is in force as lies within the outer perimeter fence, wall or other obstacle securing the protection of the site, plus any other premises falling within this outer perimeter fence etc. This is to make clear that in cases where there are differences between the alignment of the outer perimeter fence etc. and the area of the licensed site, it is an offence to be inside the outer perimeter fence etc. Conversely, where there is land that is part of a licensed nuclear site, but which falls outside the outer perimeter fence etc., it is not an offence to be on this land. The powers of a constable to arrest a person suspected of committing the offence in section 130 of the SOCAP apply.

#### **Subsection (4)**

74. **Subsection (4)** amends section 129 of the SOCAP in the same manner as section 128.

### ***Section 13 – Maximum penalty for possessing for terrorist purposes***

#### **Subsections (1) and (2)**

75. **Subsection (1)** increases the maximum sentence for the existing offence of possessing an item in circumstances that may give rise to a reasonable suspicion that it is possessed for a purpose connected to the commission, preparation or instigation of an act of terrorism. This amends section 57(4)(a) of the TACT. The maximum penalty is increased from 10 to 15 years' imprisonment. **Subsection (2)** makes it clear that this is not a retrospective amendment, and that offences committed before this section comes into force will only attract the maximum penalty of 10 years' imprisonment.

### ***Section 14 – Maximum penalty for certain offences relating to nuclear material***

76. **Section 14** increases the maximum sentence for the existing offences involving preparatory acts and threats set out in Section 2 of the Nuclear Material (Offences) Act 1983. That section creates offences relating to receiving, holding or dealing with nuclear material, or making threats in relation to nuclear material, with intent to commit certain offences or enabling others to commit those offences. These include, among other offences, those of murder, manslaughter, culpable homicide, assault to injury, malicious mischief or causing injury, certain offences against the person, theft, or extortion. The previous maximum penalty was fourteen years' imprisonment, or (if lower) the maximum sentence for the carrying out of such acts. **Subsection (1)** sets out the new maximum penalty for these offences, which on conviction on indictment, will be imprisonment for life. **Subsection (2)** makes it clear that this is not a retrospective amendment, and that offences committed before this section comes into force will not invite the higher penalty.

### ***Section 15 – Maximum penalty for contravening notice relating to encrypted information***

77. **Section 15** amends section 53 of the Regulation of Investigatory Powers Act 2000. Part 3 of the Regulation of Investigatory Powers Act 2000 provides a power to enable properly authorised persons (such as members of the law enforcement, security and intelligence agencies) to serve notices on persons requiring the disclosure of protected (e.g. encrypted) information in an intelligible form. Section 53 sets out the penalties for failing to make the disclosure required by the notice. **Subsection (1)** increases the maximum penalty for conviction on indictment of contravening a notice issued on national security grounds from two to five years' imprisonment.

### ***Section 16 – Preparatory hearings in terrorism cases***

78. Under section 29 of the **Criminal Procedure and Investigations Act 1996 (c.25)** ("the CPIA") a judge has power to order a preparatory hearing in cases of such seriousness or complexity that substantial benefits are likely to accrue from such a hearing. A similar power to order preparatory hearings in cases of serious or complex fraud is in

section 7 of the Criminal Justice Act 1987. The purpose of a preparatory hearing is to identify the material issues, assist the jury's comprehension of those issues, expedite the proceedings before a jury, deal with questions of severance and joinder, and otherwise assist the trial judge's management of the case. Section 16 amends the CPIA to make preparatory hearings mandatory in terrorism cases.

### **Subsection (2)**

79. Section 29(1) of the CPIA provides a power to order a preparatory hearing in cases of suitable complexity, seriousness or which are likely to have a long trial if holding a hearing for a particular purpose, such as assisting the judge in the management of the trial, would result in substantial benefit. Section 29(1A) provides a power to hold a preparatory hearing in a case in which the trial may proceed without a jury under section 45 of the Criminal Justice Act 2003 (this provision is yet to be commenced). Section 16 of the Act amends section 29 of the CPIA to place an obligation on the judge to order a preparatory hearing in two particular circumstances concerning terrorism. The first, set out in new subsection (1B), is where at least one person in the case is charged with a terrorism offence. The second, set out in new subsection (1C), is where at least one person in the case is charged with an offence that carries a penalty of a maximum of at least 10 years' imprisonment and it appears to the judge that the conduct in respect of that offence has a terrorist connection.

### **Subsections (3) to (5)**

80. **Subsection (3)** inserts a new subsection (3) into the CPIA that deals with when the respective provisions on preparatory hearings in the CPIA and the Criminal Justice Act 1987 should apply. It provides that in a case of serious or complex fraud a judge should first decide whether to order a preparatory hearing under the 1987 Act. If he decides not to he cannot order a preparatory hearing under the CPIA, unless a preparatory hearing would be mandatory under new subsections (1B) or (1C).
81. **Subsection (5)** inserts new subsections into section 29 of the CPIA to define terms introduced by this section. The new subsection 29(6) of the CPIA defines 'terrorism offence'. The definition includes certain specified offences in the TACT and this Act, and the offences of conspiracy or attempting to carry out such an offence, or incitement to commit such an offence. New subsection 29(7) CPIA provides that an offence will be considered to carry a penalty of 10 years or more if the maximum penalty for conviction on indictment is 10 years or more or life imprisonment. New subsection 29(8) of the CPIA defines terrorist connection for the purposes of the new provisions and new subsection 29(9) of the CPIA provides that terrorism in the new provisions has the same meaning as in section 1 of the TACT.

### **Section 17 – Commission of offences abroad**

82. **Subsections (1) to (4)** of section 17 make provision in relation to extra-territorial jurisdiction for the UK courts for the new offences contained in sections 1, 6, and 8 to 11 of this Act, and two offences in the TACT. Sections 1 and 6 are only covered by this section in as much as they relate to Convention offences as opposed to acts of terrorism. The overall effect of the section is that if, for example, an individual were to commit one of these offences in a foreign country, they would be liable under UK law in the same way as if they had committed the offence in the UK.
83. The extra-territorial jurisdiction in section 17 is needed in order to give effect to Article 14 of the Council of Europe Convention on the Prevention of Terrorism (as respects the offences in sections 1 and 6) and Article 9 of the International Convention for the Suppression of Acts of Nuclear Terrorism (as respects the offences in sections 9 to 11). Article 14.1 of the Council of Europe Convention on the Prevention of Terrorism requires State Parties to take jurisdiction in respect of offences committed anywhere by nationals of that State. In addition, Article 14.3 requires State Parties to take jurisdiction

in respect of anyone present in their territory if they do not extradite that person to the state where the offence was committed. Paragraphs 1 and 4 of Article 9 of the Nuclear Convention set out the same requirements. Extra-territorial jurisdiction is appropriate for the offence in section 8 because the places at which terrorist training is taking place are more likely to be located abroad rather than in the UK.

### **Subsections (1) to (3)**

84. **Subsection (2)** provides that this section applies to a number of offences. Firstly, it applies to the offences created by sections 1 and 6 of this Act, so far as those offences are committed in relation to any statement, instruction or training in relation to which those sections have effect by reason of their relevance to the commission, preparation, or instigation of one or more Convention offences. Secondly, it applies to all the new offences outlined in sections 8 to 11 of this Act. Thirdly, it applies to an offence under section 11(1) of the TACT (membership of proscribed organisations) and section 54 of that Act (weapons training). Fourthly, it applies to offences of conspiracy, incitement and attempt in respect of the specific listed offences.
85. Under **subsection (1)** if a person does anything outside the UK and, if he had acted in a part of the UK it would have been an offence listed in subsection (2) in that part of the UK, he is guilty of that offence, in that part of the UK. The jurisdiction in respect of offences committed abroad extends to all persons not just British citizens or companies incorporated in the UK (**subsection (3)**).

### **Subsection (4)**

86. **Subsection (4)** sets out that in the case of offences occurring wholly or partly abroad, proceedings may be brought in any place in the United Kingdom, and that for incidental purposes, the offence may be treated as having been committed in that place. This is to ensure that court and other criminal proceedings provisions can operate properly and effectively.

### **Subsections (5) and (6)**

87. **Subsection (5)** amends section 3 of the [Explosive Substances Act 1883 \(c. 3\)](#). Under section 3(1)(a) of that Act it is an offence to carry out certain acts preparatory to causing an explosion. The preparatory acts must take place in the UK or its dependencies, or, in the case of a citizen of the UK or colonies, anywhere in the world. At the moment in order for the offence to be committed the explosion must be intended to take place in the UK or the Republic of Ireland. This means that it is not an offence to do acts preparatory to an explosion in a country other than the UK or the Republic of Ireland. **Subsection (5)** amends section 3 so that the explosion can be planned to take place anywhere in the world. **Subsection (6)** provides that the amendment to the Explosive Substances Act 1883 only applies to Scotland so far as the act that may be considered an offence is an act of terrorism, an act for the purposes of terrorism, or that any possession or control of a substance is for the purposes of terrorism. The provision is so limited because section 3 of the Explosive Substances Act 1883 is only a reserved matter, within the meaning of the Scotland Act 1998, insofar as it relates to terrorism.

### ***Section 18 – Liability of company directors etc.***

88. This section provides that offences under Part 1 of this Act that are committed by corporate bodies will also be committed by a senior officer of that body if the offence was committed by the corporate body with his consent or connivance. Of the offences in Part 1 a corporate body is most likely to be prosecuted for an offence under section 2 of disseminating terrorist publications. Both the senior officer (or officers, if consent or connivance can be proved against each) and the body corporate will be liable for the offence. **Subsection (1)** relates to bodies corporate and provides that a director, manager, secretary or other similar officer of the body can be held liable under this

section on the stated grounds. **Subsection (2)** makes a similar provision in relation to Scottish firms. **Subsection (3)** provides that the term “director” includes members of a corporate body if that body is managed by its members rather than directors as such.

### ***Section 19 – Consents to prosecutions***

#### **Subsection (1)**

89. **Subsection (1)** sets out that prosecutions for offences in Part 1 of this Act may only be carried out in England and Wales with the consent of the Director of Public Prosecutions or, in Northern Ireland, with the consent of the Director of Public Prosecutions for Northern Ireland. This is subject to a case falling into subsection (2).

#### **Subsections (2) and (3)**

90. **Subsection (2)** provides that, in a case where it appears to the Director of Public Prosecutions, or Director of Public Prosecutions for Northern Ireland, that the offence has been committed for a purpose wholly or partly connected with the affairs of a foreign country, a prosecution may only be brought if the Attorney General, or, in the case of Northern Ireland, the Advocate General for Northern Ireland, agrees with the DPP’s, or the DPP for Northern Ireland’s, decision to give consent. **Subsection (3)** provides a transitional in relation to the time before the commencement of Section 27(1) of the [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#). Prior to that time the Advocate General for Northern Ireland will not be in existence and so the Attorney General for Northern Ireland must agree with the DPP for Northern Ireland’s decision to consent instead.

### ***Section 20 – Interpretation of Part 1***

91. **Section 20** provides interpretation provisions and other definitions for Part 1 of the Act.

#### **Subsection (1)**

92. **Subsection (1)** provides that definitions used in the TACT also apply to Part 1 of this Act. Such definitions that are generally relevant to the Act are discussed at paragraphs 16-19.

#### **Subsection (2)**

93. **Subsection (2)** contains a number of definitions including the definition of Convention offence as set out in Schedule 1 to the Act.

#### **Subsection (3)**

94. **Subsection (3)** clarifies references to the public. In particular it makes it clear that public can mean the public of a country other than the UK. It also makes it clear that, other than in section 9(4) (definition of radioactive material), it includes a meeting or other group of persons that the public can attend. A meeting or group will be included in the definition even if payment must be made or other conditions must be satisfied before a person will be admitted.

#### **Subsections (4) and (6)**

95. **Subsection (4)** defines the term “publishing a statement”, for the purposes of Part 1 of the Act. This definition covers references to publication in the offence of encouragement of terrorism in section 1. The definition does not include references to publication in section 2, due to the fact that publication for the purposes of section 2 is already defined in section 2(13). The definition in **subsection (4)** includes publishing a statement in any manner to the public, providing an electronic service by which means the public have access to the statement, or using an electronic service provided

by another in relation to the material supplied by him so as to enable the public to have access to the statement. The second limb of the definition will include internet service providers. The third limb of the definition will include those who run websites that contain message boards and those that post messages on such message boards. **Subsection (6)** clarifies references to a statement, detailing that these are references to a communication of any description and are not limited to words. This means that images such as videos will be covered.

### **Subsections (9) to (11)**

96. **Subsection (9)** enables the Secretary of State to modify Schedule 1 (Convention offences) to add or remove offences, and make such supplemental, incidental, consequential and transitional provisions as are needed as a consequence of amendments to the list. **Subsection (10)** sets out that any such order may only add an offence in or as regards Scotland if the provision creating the offence would be outside the legislative competence of the Scottish Parliament. **Subsection (11)** sets out that such an order is subject to the affirmative resolution procedure.

### **Schedule 1 – Convention Offences**

97. The definition of Convention offence is set out in section 20(2) and it covers the offences listed in Schedule 1 and any offence equivalent to the listed offences under the law of a country or territory outside the UK. **Schedule 1** defines Convention offences for the purposes of Part 1 of this Act. References to Convention offences can be found in sections 1 (encouragement of terrorism), 3 (application of sections 1 and 2 to internet activity, etc.), 6 (training for terrorism) and 8 (attendance at a place used for terrorist training). The new offences in sections 1 and 6 implement provisions of the Council of Europe Convention for the Prevention of Terrorism. The Convention offences are intended to cover the concept of terrorist offence in the Convention. Terrorist offence is defined in Article 1 of the Convention as all the offences covered by the treaties listed in the Appendix to the Convention. As those treaties have been implemented in UK law, Schedule 1 lists the offences in UK law.
98. The following categories of offences are included: explosives offences, offences relating to biological weapons, offences against internationally protected persons, hostage taking, hijacking and other offences against aircraft, offences involving nuclear material, offences under the Aviation and Maritime Security Act 1990, offences involving chemical weapons, offences relating to terrorist funds, directing a terrorist organisation, offences involving nuclear weapons, and inchoate offences (such as conspiracy, incitement and attempting to commit an offence) relating to Convention offences. As well as being drafted in terms of Convention offences the provisions of the Act that refer to Convention offences are also drafted by reference to the wider concept of acts of terrorism.

## **Part 2**

### **Section 21 – Grounds of proscription**

99. Section 3 of the TACT gives the Secretary of State power to add an organisation to the list of proscribed organisations in Schedule 2 of that Act if he believes that the organisation is concerned in terrorism. The term “concerned in terrorism” is defined in section 3(5), and includes that the organisation promotes or encourages terrorism (section 3(5)(c)). Organisation is defined in section 121 of the TACT as including any association or combination of persons. A number of the offences in the TACT are dependent on an organisation being proscribed, for example, the offences in section 11 (membership of a proscribed organisation) and section 12 (support for a proscribed organisation). Also some of the powers in the TACT can be exercised on the basis that an organisation is proscribed, for example, the resources of a proscribed organisation can be seized as terrorist cash under Part 3 of the TACT (see in particular section 25).



100. **Section 21** widens the grounds of proscription. It provides that a group may be considered to promote or encourage terrorism under section 3(5)(c) if its activities include the unlawful glorification of terrorism or its activities are carried out in a manner that ensures that it is associated with statements containing unlawful glorification of terrorism. Glorification of conduct is unlawful if persons who may become aware of it could reasonably be expected to infer that the conduct is glorified as conduct that should be emulated in existing circumstances. As in Part 1 of the Act conduct and conduct that is illustrative of a type of conduct are both covered. Glorification and statement are both defined in similar terms to Part 1 of the Act. Glorification is defined to include praise and celebration. Statement is defined to include a communication without words consisting of sounds, images or both.

### ***Section 22 – Name changes by proscribed organisations***

101. Section 3 of the TACT defines a proscribed organisation for the purposes of the TACT as an organisation listed in Schedule 2 to that Act or an organisation that operates under the same name as a listed organisation. Various offences under the TACT depend on an organisation being proscribed. This section deals with the situation in which an organisation is the same as an organisation that appears in Schedule 2 to the TACT but it is operating under a name that is different to that listed in Schedule 2 and the situation in which an organisation listed in Schedule 2 is operating under several names not all of which appear in Schedule 2.

#### **Subsection (2)**

102. **Subsection (2)** amends section 3 of the TACT. New subsection (6) of section 3 provides that, if the Secretary of State believes that an organisation that is listed in Schedule 2 is operating under a name that is not specified in Schedule 2, or that an organisation is operating under a different name but is the same as a listed organisation, he can make an order to the effect that the name that does not appear in Schedule 2, is another name for the listed organisation. The effect of such an order is that the organisation included in the order will be treated as if it were listed in Schedule 2 under both the name already specified for it in the Schedule and the other name given in the order (new subsection (7)). This effect continues while the order is in force and the organisation is listed in Schedule 2. The Secretary of State has the power to revoke the order in new subsection (8) of section 3.
103. An order under these provisions is subject to the negative resolution procedure. This is in contrast to an order amending Schedule 2 which is subject to the affirmative resolution procedure.

#### **Subsections (3) to (7)**

104. These subsections apply the existing provisions in the TACT for review of and appeal against proscription to an order that a name be treated as another name for a listed organisation. Section 4 of the TACT allows those who have an interest in an organisation being proscribed to apply to the Secretary of State to have an organisation de-proscribed. **Subsections (3) and (4)** of this section amend section 4 to allow similar applications in respect of an order that a name be treated as another name for a listed organisation. **Subsection (5)** includes orders to treat a name as another name for a listed organisation in section 5 of the TACT, which allows an appeal to the Proscribed Organisations Appeal Commission (POAC), if the Secretary of State refuses to revoke an order following an application under section 4. An appeal is also possible against POAC's decision under section 6 of the TACT although this does not require specific amendment by the section.
105. If an appeal is successful under section 5 then the Secretary of State is obliged to revoke his order as provided for in new section 5(5A) of the TACT to be inserted by **subsection (6)** of the section. **Subsection (7)** includes the new orders into section 7 of

the TACT. Section 7 sets out the effect of a successful appeal on a conviction that was dependent on an organisation being proscribed.

### **Subsections (8) to (11)**

106. **Subsections (8) to (11)** make a number of amendments to the TACT that are consequential on the creation of the new type of order and its inclusion in the appeal process.

### **Section 23 – Extension of period of detention of terrorist suspects**

107. This section contains amendments to Schedule 8 to the TACT, which deals, among other things, with extension of detention prior to charging of those arrested under section 41 of the TACT. The original maximum period of detention of seven days was extended to a maximum of 14 days by section 306 of the Criminal Justice Act 2003.

### **Subsections (2), (5) and (11)**

108. **Subsection (2)** widens the group of people who may apply for a warrant of further detention under paragraph 29 of Schedule 8 and for an extension of detention under paragraph 36 of Schedule 8. At the moment only a police officer of at least rank of superintendent may make those applications. As amended, in England and Wales a Crown Prosecutor, in Scotland a procurator fiscal or the Lord Advocate, in Northern Ireland the Director of Public Prosecutions for Northern Ireland, and anywhere in the UK a police officer of the rank of superintendent or above may apply for a warrant of further detention or for extension of the period of detention. As a consequence of this change **Subsection (5)** makes an amendment to paragraph 34(1) of Schedule 8 to the TACT. It substitutes the word “person” for “officer” in that provision, ensuring that all those listed in subsection (2) have the power to apply to the judge presiding over the extension of detention hearing to have information that forms part of that application withheld from a person to whom an application relates. **Subsection (11)** makes a further consequential change to substitute a new paragraph 37 into Schedule 8. Paragraph 37 provides that any detained person must be released if the grounds on which his continued detention was authorised are no longer met and there is no other reason for him to be held. The new paragraph 37 is expanded so that as well as referring to a police officer deciding if continued detention is justified it also refers to other people that may be in charge of the case.

### **Subsections (3) and (4)**

109. **Subsection (3)** amends paragraph 29(3) of Schedule 8 so that when a court agrees to an extension of the period of detention, the period of the extension will normally be seven days. This is subject to new sub-paragraph (3A). At the moment the extension can be for anything up to seven days. **Subsection (4)** inserts a new subparagraph (3A) into paragraph 29 that provides that the court may issue a warrant of further detention for less than seven days if either the application for the warrant specifies a shorter time period or the judicial authority is satisfied that there are circumstances that mean that an extension for as long as seven days is inappropriate.

### **Subsection (6)**

110. **Subsection (6)** amends, and inserts new sub-paragraphs (1A) and (1B) into paragraph 36 of Schedule 8, which deals with the extension of warrants of further detention. The new sub-paragraphs provide that, if an application is to extend detention beyond 14 days from the relevant time it must be made to a senior judge. If an application is to extend detention for no more than 14 days from the relevant time the application must be made to a judicial authority, unless an application has previously been made to a senior judge. At the moment all applications under paragraph 36 are made to a judicial authority. **Subsection (10)** inserts a definition of senior judge into paragraph 36. Senior

judge is defined, in England, Wales and Northern Ireland as a judge of the High Court and, in Scotland as a judge of the High Court of Justiciary. A judicial authority is already defined in paragraph 29(4) of Schedule 8 as, in England and Wales, a District Judge (Magistrates' Courts) who is designated for the purposes of Part 3 of Schedule 8 by the Lord Chancellor, in Scotland, a sheriff and, in Northern Ireland, a county court judge or a resident magistrate designated for the purposes of Part 3 of Schedule 8 by the Lord Chancellor. The relevant time is defined in paragraph 36(3B) of Schedule 8 as either, the time of a person's arrest under section 41 of the TACT or, if he was detained under Schedule 7 to the TACT when he was arrested under section 41, the time his examination under that Schedule began.

### **Subsection (7)**

111. **Subsection (7)** further amends paragraph 36 of Schedule 8. The amendments have two effects. Firstly, each period of extension must be for seven days unless the application asks for a shorter period or the judicial authority (or senior judge) to which the application is made is satisfied that there are circumstances which mean that it would be inappropriate to detain the suspect for a further seven days. Secondly, the maximum period that a warrant of further detention can last in total is extended from 14 days to 28 days. In cases where detention for a further seven days would exceed the 28 day limit, the senior judge can only authorise continued detention up to the 28 day limit.

### **Subsections (8) and (9)**

112. **Subsection (8)** amends paragraph 36(4) of Schedule 8 to provide that paragraphs 30(3) and 31 to 34 of Schedule 8 (which deal with notice of applications, grounds for extension, representation and withholding of information) are to apply to applications to senior judges as they apply to applications to judicial authorities but references to judicial authority are to be read as references to senior judge. **Subsection (9)** makes a consequential amendment to paragraph 36(5).

### **Subsection (12)**

113. **Subsection (12)** sets out that the amendments made to the procedures for extension of detention under Schedule 8 of the TACT shall not apply if the arrest of the person under detention occurred before the commencement of this section of the Act, or if his examination under Schedule 7 to the TACT began before the commencement of this section of the Act.

### **Section 24 – Grounds for extending detention**

114. This section amends the grounds for authorising extended detention under Schedule 8 to the TACT, for review officers (during the first 48 hours of detention) and for the judicial authority or senior judge (thereafter).

### **Subsection (1)**

115. At the moment paragraph 23(1) of Schedule 8 lists a number of grounds on which a review officer can decide to continue to detain a person. **Subsection (1)** adds to that list. It sets out that a review officer may extend detention if he is satisfied that it is necessary pending the result of an examination or analysis of any relevant evidence or an examination or analysis of anything that may result in relevant evidence being obtained. An examination or analysis would include a DNA test.

### **Subsections (2) and (3)**

116. **Subsections (2) and (3)** make the same change to the grounds for issuing a warrant of further detention in paragraph 32 of Schedule 8. By virtue of paragraph 36(4) of Schedule 8 this new ground will also apply in relation to an application for extension of a warrant of further detention.

### **Subsection (6)**

117. **Subsection (6)** sets out that the amendments made to the grounds for extension of detention under Schedule 8 to the TACT shall not apply if the arrest of the person under detention occurred before the commencement of this section of the Act, or if his examination under Schedule 7 to the TACT began before the commencement of this section of the Act.

### **Section 25 – Expiry or renewal of extended maximum detention period**

118. The effect of Section 25 is that, insofar as they extend the maximum period a terrorist suspect may be detained under the TACT prior to charge, the amendments made by Section 23 will cease to have effect one year after their commencement unless continued in force by an order made by the Secretary of State. In other words, if the Secretary of State does not make an order the maximum period of detention will revert to 14 days.

### **Subsections (1) to (6)**

119. **Subsection (1)** provides that Section 25 shall apply if more than a year has passed since the commencement of Section 23, and an order is not currently in force disapplying this section. **Subsection (2)** sets out that the Secretary of State may make an order by statutory instrument to disapply this section for up to a period of one year. The power can be used more than once. **Subsection (3)** provides that, if no order disapplying this section is made under subsection (2), the maximum period that an individual can be detained under the TACT is limited to 14 days. It further provides that in that situation the consequential modifications to paragraphs 36 and 37 of Schedule 8, as set out in **subsection (4)**, will have effect. The effect of those modifications is that if the maximum period of detention reverts to 14 days all applications for extension of detention will be made to a judicial authority. This is because under the provisions inserted into Schedule 8 to the TACT by Section 23 a senior judge is only concerned in applications for extension of detention beyond 14 days. If it is not possible to extend detention beyond 14 days then there is no need for a senior judge to be involved. **Subsection (5)** sets out that in the case of an individual who has been detained for a period longer than 14 days under the TACT at any point in time at which this section applies, the person with custody of that individual must release him immediately, even if his detention had been authorised to continue for longer at a time prior to this section applying. **Subsection (6)** sets out that the order disapplying Section 25 of the Act will be subject to the affirmative resolution procedure.

### **Section 26 – All premises warrants: England and Wales and Northern Ireland**

120. Under Paragraph 1 of Schedule 5 to the TACT a constable can apply to a justice of the peace for a warrant to enter and search premises for the purposes of a terrorist investigation. At the moment that application and warrant must specify the set of premises to which it relates. Under paragraph 11 of Schedule 5 a constable may apply to a Circuit judge for a warrant to enter and search premises for excluded and special procedure material. Once paragraph 9(a) of Schedule 4 to the Courts Act 2003 is commenced it will also be possible for a constable to make an application under paragraph 11 to a District Judge (Magistrates' Courts), the amendments made by section 26 take account of this change. The terms excluded material and special procedure material are defined in paragraph 4 of Schedule 5 and are given the same meaning as in the Police and Criminal Evidence Act 1984. Under section 11 of that Act, excepted material means personal records that a person has acquired or created in the course of any trade, business, profession or other occupation, or for the purpose of any paid or unpaid office and which he holds in confidence; human tissue or tissue fluid that has been taken for medical diagnosis or treatment and which a person holds in confidence; and journalistic material which consists of documents, or records other than documents, and which a person holds in confidence. Under section 14 of that Act, special procedure material means journalistic material that is not excluded material; and

material acquired or created in the course of any trade, business, profession or other occupation, or for the purpose of any paid or unpaid office and which is held subject to an express undertaking of confidence or an obligation of confidence imposed by any enactment. As with a warrant under paragraph 1, at the moment a warrant in relation to excluded or special procedure material must relate to specific premises. This section amends Schedule 5 to allow all premises warrants to be issued. These provisions are based on the provisions in sections 113 and 114 of the SOCAP which amend the Police and Criminal Evidence Act 1984 to allow all premises warrants to be granted under that Act.

121. A number of terms that are used in sections 26 and 27 are defined in the TACT. Premises is defined in section 121 as including any place and in particular including a vehicle, an offshore installation within the meaning given in section 44 of the Petroleum Act 1998 and a tent or moveable structure. Vehicle is defined later in section 121 as including an aircraft, hovercraft, train or vessel. Section 44 of the Petroleum Act 1998 covers various installations that are maintained in the water or on the foreshore or other land that is intermittently covered with water and which do not have a link with dry land such as oil or gas rigs. Dwelling is defined in section 121 of the TACT as a building or part of a building used as a dwelling and a vehicle which is habitually stationary and is used as a dwelling.

### **Subsections (2) and (3)**

122. **Subsections (2) and (3)** amend paragraph 1 of Schedule 5 to the TACT to provide that search warrants under that Schedule may authorise the searching not just of named premises but also any premises occupied or controlled by a specified person (known as an “all premises” warrant).

### **Subsection (4)**

123. **Subsection (4)** amends paragraph 1(5) to provide that an all premises warrant may only be granted where it is not reasonably practicable to specify in the application for the warrant all the premises which the person to which the application relates occupies or controls and which might need to be searched. This subsection also makes a number of consequential changes.

### **Subsections (5) and (6)**

124. **Subsection (5)** amends the TACT to provide that paragraph 2 of Schedule 5 only applies to specific premises warrants and **subsection (6)** goes on to insert a paragraph 2A into Schedule 5 for all premises warrant that corresponds to paragraph 2. Paragraph 2 cannot apply to all premises warrants because it refers to an application not relating to residential premises and with an all premises warrant the premises to which it relates will not be known at the time of the application. Under paragraph 2A if the justice of the peace is not convinced of the necessity of the warrant he may still grant it if the other conditions are met, so long as the application is made by a police officer of at least the rank of superintendent, the warrant is not executed in respect of residential premises and the warrant is executed within 24 hours of being issued. The new paragraph includes a definition of residential premises as any premises which the constable exercising the power to enter and search has reasonable grounds for believing are used wholly or mainly as a dwelling.

### **Subsections (7) and (8)**

125. **Subsections (7) and (8)** amend paragraph 11 of Schedule 5 to the TACT, which allows for applications for search warrants involving excluded or special procedure material following an order under paragraph 5, or where it is not appropriate to make such an order, for access to and production of such material, to allow all premises warrants to be made in such cases.

### **Subsections (9) and (10)**

126. **Subsections (9) and (10)** amend paragraph 12 of Schedule 5 to the TACT, which sets out the test for granting a warrant under paragraph 11. The tests for an all premises warrant are the same as for a specific premises warrant but are modified to take account of the fact that there are no premises to be specified.

### **Section 27 – All premises warrants: Scotland**

127. This section provides for similar changes to those made in section 26 to provide for all premises warrants in terrorist investigations in Scotland.

### **Section 28 – Search, Seizure and forfeiture of terrorist publications**

128. This section creates a power of seizure and forfeiture in relation to terrorist publications within the meaning of section 2.

### **Subsections (1) and (2)**

129. **Subsection (1)** grants a justice of the peace the power to issue a warrant authorising a constable to enter and search premises and seize any article on those premises that meets the test in subsection (2) if he is satisfied that there are reasonable grounds for suspecting that an article that meets the test in subsection (2) is on those premises. The test in **subsection (2)** is that the article is likely to be subject to conduct of the kind mentioned in section 2(2)(a) to (e) (distribution etc.) and it would be treated as a terrorist publication (as defined in section 2(3)).

### **Subsection (3)**

130. **Subsection (3)** entitles the person exercising the power conferred by the warrant to use reasonable force in doing so.

### **Subsections (4) and (5)**

131. If a warrant is granted on the basis of an information laid by or on behalf of the Director of Public Prosecutions (“the DPP”), or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland, the articles seized under it are liable to be forfeited under the procedure in Schedule 2 (as introduced by **subsection (8)**). **Subsection (4)** states that items seized under the authority of a warrant may be removed by a constable to such a place as he thinks fit, and may be retained there until returned or otherwise disposed of in accordance with procedures outlined. **Subsection (5)** sets out that only those items seized under a warrant issued following an information laid by the DPP or the DPP for Northern Ireland shall be liable to forfeiture. Subsection (5) also provides that if forfeited, articles may be destroyed or disposed of by a constable in whatever manner he sees fit.

### **Subsections (6) and (7)**

132. **Subsection (6)** amends the Criminal Justice and Police Act 2001 to include the powers of seizure in this section in Parts 1 and 3 of Schedule 1 of that Act. This will enable a bulk of material to be taken away to be read, rather than being examined on the premises, to see if it should be seized. This is needed for cases where large numbers of publications are held at a set of premises. **Subsection (7)** sets out that existing rules for seized property contained in the Police (Property) Act 1897, and the Police (Northern Ireland) Act 1998 shall not apply to articles seized under authority of the powers outlined in this section as the Act provides specific powers for the treatment of seized property.

### **Subsections (9) and (10)**

133. **Subsection (9)** provides a number of definitions. “Article” is defined as having the same meaning as in Part 1 of this Act (defined in Section 20 (interpretation of Part 1)). “Premises” is defined as having the same meaning as in section 23 of the [Police and Criminal Evidence Act 1984 \(c.60\)](#). The definition in that Act defines premises as including any place and in particular including any vehicle, vessel, aircraft, hovercraft, offshore installation, renewable energy installation, tent or movable structure. **Subsection (10)** modifies section 28 in its application to Scotland.

### ***Schedule 2 – Seizure and forfeiture of terrorist publications***

134. **Schedule 2** sets out the procedure for forfeiture of terrorist publications seized under section 28 of this Act. Schedule 2 is closely based on the forfeiture provisions in Schedule 3 to the [Customs and Excise Management Act 1979 \(c.2\)](#).

### ***Paragraph 2***

135. **Paragraph 2** sets out that notice must be given by the constable responsible for the seizure to every person whom he believes to be the owner of any article seized. If there is no such person, or it is not reasonably practical for such notice to be given, it should be given to the person the constable believes is the occupier of the premises where the article was seized. The notice must set out what has been seized, and the grounds for seizure. Only if a notice has been properly given under paragraph 1 or it was not reasonably practicable to comply with paragraph 1 can an article be forfeited (sub-paragraph (5)). Sub-paragraphs (3), (4) and (6) further set out requirements about the manner in which the notice must be given.

### ***Paragraphs 3 and 4***

136. These paragraphs set out that a person claiming that any seized article is not liable to forfeiture may give notice of such a claim to a constable at any police station in the police area in which the seizure took place. Such a notice, which must be given in writing, must be given within one month of the notice of the seizure, or the seizure itself if no notice has been given.

### ***Paragraph 5***

137. **Paragraph 5** provides that forfeiture is automatic if no claim is made under paragraphs 3 and 4 within the time for making a claim under those paragraphs (one month), or if an attempt is made to make a claim but the requirements of 3 and 4 are not complied with.

### ***Paragraph 6***

138. **Paragraph 6** provides for forfeiture by the court in cases where a claim is made. When a notice claiming that an article seized is not liable to forfeiture has been received, the relevant constable must decide whether to take proceedings to ask the court to condemn the article as forfeited. This decision should be taken as soon as reasonably practicable following the notice of the claim. For the court to order the condemnation of an article to forfeiture, it must be satisfied of two matters: firstly, that the item was liable for forfeiture when seized, and secondly, that its forfeiture would not be inappropriate. If the court is not satisfied that these tests have been met, it must order the return of the item to the person it believes is entitled to it. If the constable decides not to take proceedings for condemnation, then the constable must return the article to the person who appears to be the owner of it as soon as reasonably practicable following the decision not to take proceedings for condemnation.

### **Paragraphs 7 to 11**

139. These paragraphs set out the procedure for forfeiture proceedings in court. These proceedings will be civil proceedings. **Paragraph 7** sets out the courts in which such proceedings may be instituted. **Paragraph 8** states that such proceedings may only be instituted in a magistrates' court, the sheriff court or a court of summary jurisdiction if it has jurisdiction in relation to the place where the article to which they relate was seized. **Paragraph 10** sets out the procedure for appeals against decisions of summary jurisdiction courts to higher courts. **Paragraph 11** sets out that for the duration of any appeal the seized items will remain in the possession of the constable who seized them.

### **Paragraphs 12 to 17**

140. **Paragraph 12** sets out that if an article is condemned as forfeited by the court, it will be deemed to have been forfeited from the time of the seizure. If 12 months after a requirement to return property arises an article that should have been returned is still with a constable and it is not reasonably practicable for it to be returned the constable can dispose of it (**paragraph 13**). **Paragraphs 14 and 15** set out provisions of proof, detailing that the fact, form and manner of seizure is to be assumed to have been by the process set out in this Act, unless the contrary is shown. They also detail how the condemnation of an article as forfeited may be proved. **Paragraph 16** sets out special provisions for the property of a body corporate, two or more partners, and more than five persons. **Paragraph 17** provides that the returning of an item to a person in line with requirements in this Schedule does not affect the rights of any other person in respect of that article. This ensures that property and ownership rights in an article are not affected by its return to a particular individual.

### **Section 29 – Power to search vehicles under Schedule 7 to the Terrorism Act 2000 (c.11)**

141. This section extends paragraph 8(1) of Schedule 7 to the TACT to allow an examining officer (i.e. a constable, an immigration officer or a customs officer) to search a vehicle at a port which is on a ship or aircraft, or which the examining officer reasonably believes has been or is about to be on a ship or aircraft for the purposes of determining whether a person the examining officer is questioning under paragraph 2 of Schedule 7 falls within section 40(1)(b) of the TACT. A person falls within section 40(1)(b) of the TACT if he is or has been concerned in the commission, preparation or instigation of acts of terrorism. At the moment an examining officer does not have the power to search vehicles in these circumstances, even though he does have the power to search vehicles in the Northern Ireland border area (see paragraph 8(2) of Schedule 7). The definition of vehicle in section 121 of the TACT (which provides that “vehicle” includes an aircraft, hovercraft, train or vessel) does not extend to Schedule 7.

### **Section 30 – Extension to internal waters of authorisations to stop and search**

142. This section amends sections 44 and 45 of the TACT. Section 44 provides that an authorisation may be given for a particular police area or part of a police area and under the authorisation a constable may stop a vehicle in the area and search the vehicle, the driver of the vehicle, a passenger in the vehicle and anything on or in the vehicle or carried by the driver or a passenger. **Subsection (2)** adds a new subsection to section 44 to enable an authorisation under section 44 to include internal waters adjacent to any area or place specified under section 44(4) or part of such internal waters. **Subsections (3) and (4)** make amendments to sections 44 and 45 to ensure that “driver” in those sections makes sense in the context of a vehicle which is not a car. “Driver” is defined in Section 52 of the TACT as including the person who was driving the vehicle when it was left on a road, if it was left on a road. Under section 45 a constable may seize an article found during a search under section 44.



**Section 31 – Amendment of the Intelligence Services Act 1994 (c.13)**

143. **Section 31** makes amendments to the ISA in relation to the powers of the security and intelligence services with respect to warrants to carry out acts both overseas and in the UK.

**Subsection (2)**

144. **Subsection (2)** grants the Secretary of State the power to nominate specified senior officials who will then be entitled in urgent cases to authorise warrants under section 5 of the ISA (warrants authorising actions of the security and intelligence services).

**Subsection (3)**

145. **Subsection (3)** provides that such warrants issued by the senior officials nominated by the Secretary of State may only authorise actions that would, if done outside the British Islands, be covered by a current authorisation issued by a Secretary of State under section 7 of the ISA (authorisations of acts outside the British Islands). It further provides that the person issuing any such warrant must inform the Secretary of State as soon as practicable after such a warrant is issued.

**Subsection (4)**

146. **Subsection (4)** amends the duration for which warrants issued by senior officials may last from two to five working days.

**Subsection (5)**

147. **Subsection (5)** amends the duration for which authorisations issued by senior officials under section 7 of the ISA may last from two to five working days. These warrants relate to the authorisation of actions outside the British Islands that would otherwise be contrary to UK law.

**Subsection (6)**

148. **Subsection (6)** adds a provision to section 7 of the ISA that actions carried out in relation to property overseas that have been authorised by the Secretary of State under that section, and that are capable of being authorised by a warrant under Section 5, may continue after a certain change of circumstances for up to five working days. These changes of circumstances are the discovery that the property to which the actions relate was actually in the British Islands, when it was previously believed that it was outside, or the discovery that the target had been brought into the British Islands. The period of five working days is deemed to have begun at the point that it first appears to a member of the Intelligence Service, or to GCHQ, that a change of circumstances has occurred.

**Section 32 – Interception warrants**

149. **Section 32** makes amendments to the provisions concerning the duration and modification of, and safeguards attached to, interception warrants issued pursuant to Part 1 of RIPA.
150. **Subsection (2)** amends section 9(6) of RIPA, bringing into line the duration of the initial interception warrant issued in the interests of national security or for the purpose of safeguarding the economic wellbeing of the United Kingdom with the duration of any such warrant when renewed. Previously, these warrants lasted only for three months when first issued, but could be renewed for a six month period. This amendment provides that both initial and renewed warrants will now last for a maximum of 6 months.
151. **Subsections (3) and (4)** amend section 10 of RIPA, to allow modifications of the schedules of an intercept warrant, issued in the interests of national security, to be made

by a senior official who is either the person to whom it is addressed, or one of their subordinates. Such modifications cease to have effect at the end of the fifth working day.

152. **Subsections (5), (6) and (7)** amend section 16 of RIPA, which provides extra safeguards in the case of warrants to which section 8(4) certificates apply. One of these safeguards is a general prohibition on examining material intercepted under such warrants selected by reference to an individual who is known to be for the time being in the British Islands or by a factor which has as its purpose the identification of material contained in communications to or from such an individual. However, section 16(3) of RIPA allows such selection, provided certain conditions are met. One of those conditions is that the material relates only to communications sent during the period specified in the section 8(4) certificate, such period having a maximum of 3 months. **Subsections (5) (a) and (6)** make amendments such that, in cases where the section 8(4) certification has been issued in the interests of national security, that maximum period is increased from 3 to 6 months.
153. Section 16(5) of RIPA further allows such selection where there has been a change of circumstances which would otherwise mean that selection for examination would no longer be possible because an individual is found to have entered the British Islands. Selection can only continue pursuant to this provision for one working day after the day on which the change of circumstances became apparent. **Subsections (5)(b) and (7)** make amendments such that, in cases where the section 8(4) certification has been issued in the interests of national security, that period is increased from one to five working days.

### ***Section 33 – Disclosure notices for the purposes of terrorist investigations***

154. This section extends the regime contained in Part 2, chapter 1 of the SOCAP under which a disclosure notice may be issued by the Investigating Authority, requiring those on whom such a notice is served to provide specific information as set out in the notice. Refusal to provide information is an offence, punishable by imprisonment for up to 51 weeks, or a fine. Providing false or misleading information is an offence, punishable by imprisonment for up to two years, or a fine, or both. The Investigating Authority is defined as the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions, or the Lord Advocate.

#### **Subsections (1) and (2)**

155. **Subsection (1)** amends section 60(1) of the SOCAP to extend the powers of the Investigating Authority to enable the issuing of disclosure notices in terrorist investigations. At the moment a disclosure notice can only be issued in connection with the investigation of specific offences. **Subsection (2)** inserts a definition of terrorist investigation into section 60 of the SOCAP.

#### **Subsection (3)**

156. **Subsection (3)** amends section 62 of the SOCAP to provide that a disclosure notice may be given where the Investigating Authority believes that a person has information that relates to a terrorist investigation. There must also be reasonable grounds for believing both that the person to whom the notice is issued has relevant information and that any information provided is likely to be of substantial value to that investigation.

#### **Subsection (4)**

157. **Subsection (4)** inserts definitions of “act of terrorism”, “terrorism”, and “terrorist investigation”, into section 70 of the SOCAP for the purpose of the disclosure notice provisions. The first two of these terms are defined by reference to the TACT. The definition of terrorism and act of terrorism are discussed at paragraphs 16-19 of these explanatory notes. The definition of terrorist investigation is set out in section 60(7)

of the SOCAP (as inserted by subsection (2) of this section). The definition covers the investigation of the commission, preparation or instigation of acts of terrorism, the investigation of acts or omissions that appear to be carried out for the purposes of terrorism and which consist of the commission, preparation or instigation of an offence and the investigation of an offence under the TACT or Part 1 of this Act (except an offence under section 1 (encouragement of terrorism) or section 2 (dissemination of terrorist publications)).

***Section 34 – Amendment of the definition of “terrorism” etc.***

158. This section amends two definitions. These amendments are required to eliminate the disparity between definitions of terrorism in UK law and the equivalent definitions in various international Conventions which the UK aims to implement. Examples of international agreements in which the disparity exists are the EU Framework Decision of 13 June 2002 on Combating Terrorism, and the International Convention for the Suppression of Acts of Terrorism. These Conventions allow for actions to be termed as terrorist if, among other tests, the use or threat of action is designed to influence international governmental organisations (such as the United Nations), in addition to State parties’ governments.
159. The section amends the definition of “terrorism”, in section 1 of the TACT to include the carrying out of acts where the use or threat is designed to influence an international governmental organisation. The new definition, as amended will read:
- “1(1) In this Act "terrorism" means the use or threat of action where-
- (a) the action falls within subsection (2),
  - (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
  - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this subsection if it-
- (a) involves serious violence against a person,
  - (b) involves serious damage to property,
  - (c) endangers a person's life, other than that of the person committing the action,
  - (d) creates a serious risk to the health or safety of the public or a section of the public, or
  - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.”

Secondly, the section amends section 113 of the ATCSA in a similar way. Section 113 makes it an offence to use noxious substances in a way likely to cause violence against a person, serious damage to property or to endanger life or to make members of the public fear their life is endangered. The action must be designed to intimidate the public or to influence a government. The amendment extends to this to international governmental organisations.

***Section 35 – Applications for extended detention of seized cash***

160. This section amends Schedule 1 to the ATCSA. That Schedule makes provision for the forfeiture of terrorist cash. Under paragraph 2 of the Schedule an authorised officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash. Terrorist cash means cash that is intended to be used for terrorist purposes, cash which consists of resources of a proscribed organisation and property that is earmarked as terrorist property.

161. Once terrorist cash has been seized paragraph 3 of the Schedule governs the length of time it can be detained. Initially the cash can be detained for 48 hours after which the authorised officer must apply to a Magistrates' Court (or in Scotland a sheriff) to extend the period of detention. The first application for extension can also be made, outside Scotland, to a justice of the peace (paragraph 3(3)). This section adds a new subparagraph to paragraph 3 that provides that if the first application for extension of detention of terrorist cash is made to a justice of the peace (or the sheriff, in the case of Scotland) it can be heard without notice being given to the person affected by the order or that person's legal representative and can be heard in private in the absence of the affected person and his legal representative. The person affected will have the opportunity to challenge the making of the order at a later date because he will be served with a copy of it (paragraph 3(4)) and can apply for it to be discharged (paragraph 5). **Subsection (2)** provides that this amendment will not be retrospective, and may only be applied to applications to extend detention of seized cash made after the commencement of this section.

### **Part 3**

#### **Section 36 – Review of terrorism legislation**

##### **Subsections (1) to (6)**

162. **Subsection (1)** provides that the Secretary of State must appoint a person to review the operation of the provisions of the TACT and of Part 1 of this Act. This will replace section 126 of the TACT that provides for the annual review of the TACT. **Subsection (2)** sets out that such a person may carry out such reviews from time to time and the outcome of such a review must be reported to the Secretary of State. Under **subsections (3) and (4)** the first review and report must be completed in the year following the laying before Parliament of the last report under section 126 of the TACT and subsequently reviews and reports must be conducted and produced at least annually. **Subsection (5)** sets out that the Secretary of State must lay a copy of any report before Parliament. **Subsection (6)** allows for the reimbursing of the reviewer for costs incurred in the course of his duties.

#### **Section 37 – Consequential amendments and repeals**

163. **Section 37** makes a number of consequential amendments to the TACT and introduces Schedule 3 to the Act which makes a number of repeals. All of these repeals are consequential on the substantive changes made elsewhere in the Act.

##### **Subsections (1) to (4)**

164. **Subsection (1)** amends the definition of "terrorist investigation" in the TACT to include investigation of the offences in Part 1 of this Act, other than sections 1 and 2. **Subsection (2)** amends section 117 of the TACT relating to consents to prosecutions. The amendment provides that, if it appears to the Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland, that an offence to which the consent to prosecutions provisions in the TACT apply, has been carried out for a purpose wholly or partly connected with the affairs of a country other than the UK, prosecution will only proceed if the Attorney General, or, in Northern Ireland, the Advocate General for Northern Ireland, agrees with the DPP's or the DPP for Northern Ireland's decision to consent. The subsection also provides a transitional provision in relation to section 27(1) of the Justice (Northern Ireland) Act 2002. Before that provision comes into force the Advocate General for Northern Ireland will not be in existence and so during that time the Attorney General for Northern Ireland must agree with the DPP for Northern Ireland instead. **Subsection (3)** amends the TACT to provide for supplemental powers of the courts in respect of forfeiture orders made under sections 54, 58 and 103 of that Act, entitling the courts to make any such provision as appears to be necessary for giving effect to forfeiture. **Subsection (4)** adds the offences in Part

*These notes refer to the Terrorism Act 2006 (c.11)  
which received Royal Assent on 30 March 2006*

1 of this Act to the list of Scheduled Offences in Schedule 9 to the TACT. These are offences in respect of which special procedures, such as trial without jury, apply in Northern Ireland.

***Section 39 – Short title, commencement and extent***

165. Under section 39(5) the Act extends to the whole of the United Kingdom except the provisions in section 17 relating to the use of explosives for non terrorist purposes do not extend to Scotland (since this is a devolved matter). The section provides for the extension of any provisions of the Act, with such modifications as are seen fit, to the Channel Islands or Isle of Man by Her Majesty by Order in Council.