



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 4

#### COUNTER-TERRORISM POWERS

##### *Pre-charge detention of terrorist suspects*

#### **57 Maximum detention period of 14 days**

- (1) In paragraph 36(3)(b)(ii) of Schedule 8 to the Terrorism Act 2000 (maximum period of pre-charge detention for terrorist suspects) for “28 days” substitute “14 days”.
- (2) Omit section 25 of the Terrorism Act 2006 (which provides for the 28 day limit in paragraph 36(3)(b)(ii) of Schedule 8 to the Act of 2000 to be 14 days subject to a power to raise it to 28 days).

#### **58 Emergency power for temporary extension and review of extensions**

- (1) After Part 3 of Schedule 8 to the Terrorism Act 2000 (extension of detention of terrorist suspects) insert—

#### **“PART 4**

##### EMERGENCY POWER WHEN PARLIAMENT DISSOLVED ETC. FOR TEMPORARY EXTENSION OF MAXIMUM PERIOD FOR DETENTION UNDER SECTION 41

- 38 (1) The Secretary of State may make a temporary extension order if—
  - (a) either—
    - (i) Parliament is dissolved, or
    - (ii) Parliament has met after a dissolution but the first Queen’s Speech of the Parliament has not yet taken place, and

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(b) the Secretary of State considers that it is necessary by reason of urgency to make such an order.

(2) A temporary extension order is an order which provides, in relation to the period of three months beginning with the coming into force of the order, for paragraphs 36 and 37 to be read as if—

- (a) in paragraph 36(3)(b)(ii) for “14 days” there were substituted “28 days”, and
- (b) the other modifications in sub-paragraphs (3) and (4) were made.

(3) The other modifications of paragraph 36 are—

- (a) the insertion at the beginning of sub-paragraph (1) of “Subject to sub-paragraphs (1ZA) to (1ZI),”,
- (b) the insertion, after sub-paragraph (1), of—

“(1ZA) Sub-paragraph (1ZB) applies in relation to any proposed application under sub-paragraph (1) for the further extension of the period specified in a warrant of further detention where the grant (otherwise than in accordance with sub-paragraph (3AA) (b)) of the application would extend the specified period to a time that is more than 14 days after the relevant time.

(1ZB) No person may make such an application—

- (a) in England and Wales, without the consent of the Director of Public Prosecutions,
- (b) in Scotland, without the consent of the Lord Advocate, and
- (c) in Northern Ireland, without the consent of the Director of Public Prosecutions for Northern Ireland,

unless the person making the application is the person whose consent is required.

(1ZC) The Director of Public Prosecutions must exercise personally any function under sub-paragraph (1ZB) of giving consent.

(1ZD) The only exception is if—

- (a) the Director is unavailable, and
- (b) there is another person who is designated in writing by the Director acting personally as the person who is authorised to exercise any such function when the Director is unavailable.

(1ZE) In that case—

- (a) the other person may exercise the function but must do so personally, and
- (b) the Director acting personally—
  - (i) must review the exercise of the function as soon as practicable, and
  - (ii) may revoke any consent given.

(1ZF) Where the consent is so revoked after an application has been made or extension granted, the application is to be dismissed or (as the case may be) the extension is to be revoked.

- (1ZG) Sub-paragraphs (1ZC) to (1ZF) apply instead of any other provisions which would otherwise have enabled any function of the Director of Public Prosecutions under sub-paragraph (1ZB) of giving consent to be exercised by a person other than the Director.
- (1ZH) The Director of Public Prosecutions for Northern Ireland must exercise personally any function under sub-paragraph (1ZB) of giving consent unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of the Justice (Northern Ireland) Act 2002 (powers of Deputy Director to exercise functions of Director).
- (1ZI) Sub-paragraph (1ZH) applies instead of section 36 of the Act of 2002 (delegation of the functions of the Director of Public Prosecutions for Northern Ireland to persons other than the Deputy Director) in relation to the functions of the Director of Public Prosecutions for Northern Ireland and the Deputy Director of Public Prosecutions for Northern Ireland under, or (as the case may be) by virtue of, sub-paragraph (1ZB) above of giving consent.”,
- (c) the substitution, for “a judicial authority” in sub-paragraph (1A), of “—
- (a) in the case of an application falling within sub-paragraph (1B), a judicial authority; and
- (b) in any other case, a senior judge”,
- (d) the insertion, after sub-paragraph (1A), of—
- “(1B) An application for the extension or further extension of a period falls within this sub-paragraph if—
- (a) the grant of the application otherwise than in accordance with sub-paragraph (3AA)(b) would extend that period to a time that is no more than 14 days after the relevant time; and
- (b) no application has previously been made to a senior judge in respect of that period.”,
- (e) the insertion, after “judicial authority” in both places in sub-paragraph (3AA) where it appears, of “or senior judge”,
- (f) the insertion, after “detention” in sub-paragraph (4), of
- “but, in relation to an application made by virtue of sub-paragraph (1A)(b) to a senior judge, as if—
- (a) references to a judicial authority were references to a senior judge; and
- (b) references to the judicial authority in question were references to the senior judge in question”,
- (g) the insertion, after “judicial authority” in sub-paragraph (5), of “or senior judge”, and
- (h) the insertion, after sub-paragraph (6), of—

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“(7) In this paragraph and paragraph 37 “senior judge” means a judge of the High Court or of the High Court of Judiciary.”

- (4) The modification of paragraph 37 is the insertion, in sub-paragraph (2), after “judicial authority”, of “or senior judge”.
- (5) A temporary extension order applies, except so far as it provides otherwise, to any person who is being detained under section 41 when the order comes into force (as well as any person who is subsequently detained under that section).
- (6) The Secretary of State may by order revoke a temporary extension order if the Secretary of State considers it appropriate to do so (whether or not the conditions mentioned in paragraphs (a) and (b) of sub-paragraph (1) are met).
- (7) Sub-paragraph (8) applies if—
- (a) any of the following events occurs—
    - (i) the revocation without replacement of a temporary extension order,
    - (ii) the expiry of the period of three months mentioned in sub-paragraph (2) in relation to such an order,
    - (iii) the ceasing to have effect of such an order by virtue of section 123(6B) and (6C), and
  - (b) at that time—
    - (i) a person is being detained by virtue of a further extension under paragraph 36,
    - (ii) the person’s further detention was authorised by virtue of the temporary extension order concerned (before its revocation, expiry or ceasing to have effect) for a period ending more than 14 days after the relevant time (within the meaning given by paragraph 36(3B)),
    - (iii) that 14 days has expired, and
    - (iv) the person’s detention is not otherwise authorised by law.
- (8) The person with custody of that individual must release the individual immediately.
- (9) Subject to sub-paragraphs (7) and (8), the fact that—
- (a) a temporary extension order is revoked,
  - (b) the period of three months mentioned in sub-paragraph (2) has expired in relation to such an order, or
  - (c) such an order ceases to have effect by virtue of section 123(6B) and (6C),
- is without prejudice to anything previously done by virtue of the order or to the making of a new order.”

(2) After section 123(6) of that Act (orders and regulations under the Act) insert—

“(6A) As soon as practicable after making an order under paragraph 38 of Schedule 8, the Secretary of State must lay a copy of the order before each House of Parliament.

- (6B) An order under paragraph 38 of Schedule 8 is to cease to have effect at the end of the period of 20 days beginning with the day on which the Secretary of State makes the order, unless a resolution approving the order is passed by each House of Parliament during that period.
- (6C) For the purposes of subsection (6B) the period of 20 days is to be computed in accordance with section 7(1) of the Statutory Instruments Act 1946.
- (6D) Subsections (6B) and (6C) do not apply to an order under paragraph 38 of Schedule 8 which revokes an order under that paragraph.”
- (3) After section 36(4) of the Terrorism Act 2006 (review of terrorism legislation) insert—
- “(4A) The person appointed under subsection (1) must ensure that a review is carried out (whether by that person or another person) into any case where the period specified in a warrant of further detention issued under Part 3 of Schedule 8 to the Terrorism Act 2000 (extension of detention of terrorist suspects) is further extended by virtue of paragraph 36 of that Schedule to a time that is more than 14 days after the relevant time (within the meaning of that paragraph).
- (4B) The person appointed under subsection (1) must ensure that a report on the outcome of the review is sent to the Secretary of State as soon as reasonably practicable after the completion of the review.”

*Stop and search powers: general***59 Repeal of existing stop and search powers**

Omit sections 44 to 47 of the Terrorism Act 2000 (power to stop and search).

**60 Replacement powers to stop and search persons and vehicles**

- (1) Omit section 43(3) of the Terrorism Act 2000 (requirement for searches of persons to be carried out by someone of the same sex).
- (2) After section 43(4) of that Act insert—
- “(4A) Subsection (4B) applies if a constable, in exercising the power under subsection (1) to stop a person whom the constable reasonably suspects to be a terrorist, stops a vehicle (see section 116(2)).
- (4B) The constable—
- (a) may search the vehicle and anything in or on it to discover whether there is anything which may constitute evidence that the person concerned is a terrorist, and
  - (b) may seize and retain anything which the constable—
    - (i) discovers in the course of such a search, and
    - (ii) reasonably suspects may constitute evidence that the person is a terrorist.
- (4C) Nothing in subsection (4B) confers a power to search any person but the power to search in that subsection is in addition to the power in subsection (1) to search a person whom the constable reasonably suspects to be a terrorist.”

(3) After section 43 of that Act insert—

**“43A Search of vehicles**

- (1) Subsection (2) applies if a constable reasonably suspects that a vehicle is being used for the purposes of terrorism.
- (2) The constable may stop and search—
  - (a) the vehicle;
  - (b) the driver of the vehicle;
  - (c) a passenger in the vehicle;
  - (d) anything in or on the vehicle or carried by the driver or a passenger; to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism.
- (3) A constable may seize and retain anything which the constable—
  - (a) discovers in the course of a search under this section, and
  - (b) reasonably suspects may constitute evidence that the vehicle is being used for the purposes of terrorism.
- (4) A person who has the powers of a constable in one Part of the United Kingdom may exercise a power under this section in any Part of the United Kingdom.
- (5) In this section “driver”, in relation to an aircraft, hovercraft or vessel, means the captain, pilot or other person with control of the aircraft, hovercraft or vessel or any member of its crew and, in relation to a train, includes any member of its crew.”

**61 Replacement powers to stop and search in specified locations**

(1) Before section 48 of the Terrorism Act 2000 (and the italic cross-heading before it) insert—

*“Powers to stop and search in specified locations*

**47A Searches in specified areas or places**

- (1) A senior police officer may give an authorisation under subsection (2) or (3) in relation to a specified area or place if the officer—
  - (a) reasonably suspects that an act of terrorism will take place; and
  - (b) reasonably considers that—
    - (i) the authorisation is necessary to prevent such an act;
    - (ii) the specified area or place is no greater than is necessary to prevent such an act; and
    - (iii) the duration of the authorisation is no longer than is necessary to prevent such an act.
- (2) An authorisation under this subsection authorises any constable in uniform to stop a vehicle in the specified area or place and to search—
  - (a) the vehicle;

- (b) the driver of the vehicle;
  - (c) a passenger in the vehicle;
  - (d) anything in or on the vehicle or carried by the driver or a passenger.
- (3) An authorisation under this subsection authorises any constable in uniform to stop a pedestrian in the specified area or place and to search—
- (a) the pedestrian;
  - (b) anything carried by the pedestrian.
- (4) A constable in uniform may exercise the power conferred by an authorisation under subsection (2) or (3) only for the purpose of discovering whether there is anything which may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b).
- (5) But the power conferred by such an authorisation may be exercised whether or not the constable reasonably suspects that there is such evidence.
- (6) A constable may seize and retain anything which the constable—
- (a) discovers in the course of a search under such an authorisation; and
  - (b) reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b).
- (7) Schedule 6B (which makes supplementary provision about authorisations under this section) has effect.
- (8) In this section—
- “driver” has the meaning given by section 43A(5);
  - “senior police officer” has the same meaning as in Schedule 6B (see paragraph 14(1) and (2) of that Schedule);
  - “specified” means specified in an authorisation.”
- (2) Schedule 5 (which inserts a new Schedule making supplementary provision about powers to stop and search in specified locations into the Terrorism Act 2000) has effect.

## 62 Code of practice

After section 47A of the Terrorism Act 2000 (for which see section 61) insert—

*“Code of practice relating to sections 43, 43A and 47A*

### **47AA Code of practice relating to sections 43, 43A and 47A**

- (1) The Secretary of State must prepare a code of practice containing guidance about—
- (a) the exercise of the powers conferred by sections 43 and 43A,
  - (b) the exercise of the powers to give an authorisation under section 47A(2) or (3),

- (c) the exercise of the powers conferred by such an authorisation and section 47A(6), and
  - (d) such other matters in connection with the exercise of any of the powers mentioned in paragraphs (a) to (c) as the Secretary of State considers appropriate.
- (2) Such a code may make different provision for different purposes.
- (3) In the course of preparing such a code, the Secretary of State must consult the Lord Advocate and such other persons as the Secretary of State considers appropriate.

#### **47AB Issuing of code**

- (1) The Secretary of State must lay before Parliament—
- (a) a code of practice prepared under section 47AA, and
  - (b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 47AA if—
- (a) the draft of the order is not so approved, and
  - (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section.

#### **47AC Alteration or replacement of code**

- (1) The Secretary of State—
- (a) must keep the search powers code under review, and
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code, the Secretary of State must consult the Lord Advocate and such other persons as the Secretary of State considers appropriate.
- (3) Section 47AB (other than subsection (4)) applies to an alteration or a replacement code prepared under this section as it applies to a code prepared under section 47AA.
- (4) In this section “the search powers code” means the code of practice issued under section 47AB(2) (as altered or replaced from time to time).

#### **47AD Publication of code**

- (1) The Secretary of State must publish the code (and any replacement code) issued under section 47AB(2).



- (2) The Secretary of State must publish—
- (a) any alteration issued under section 47AB(2), or
  - (b) the code or replacement code as altered by it.

#### **47AE Effect of code**

- (1) A constable must have regard to the search powers code when exercising any powers to which the code relates.
- (2) A failure on the part of a constable to act in accordance with any provision of the search powers code does not of itself make that person liable to criminal or civil proceedings.
- (3) The search powers code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a constable to have regard to the search powers code in determining a question in any such proceedings.
- (5) The references in this section to a constable include, in relation to any functions exercisable by a person by virtue of paragraph 15 of Schedule 4 to the Police Reform Act 2002 or paragraph 16 of Schedule 2A to the Police (Northern Ireland) Act 2003 (search powers in specified areas or places for community support officers), references to that person.
- (6) In this section “the search powers code” means the code of practice issued under section 47AB(2) (as altered or replaced from time to time).”

#### *Stop and search powers: Northern Ireland*

### **63 Stop and search powers in relation to Northern Ireland**

Schedule 6 (which makes amendments relating to stop and search powers in Northern Ireland) has effect.