

TERRORISM ACT 2000

EXPLANATORY NOTES

COMMENTARY

Part iii: Terrorist Property

25. This Part corresponds to Part III of the PTA (“Financial assistance for terrorism”) and was discussed in Chapter 6 of the Government’s consultation document under the heading “Terrorist finance”. The name has been changed to “Terrorist property” to make it clear that in the Act – just as in the PTA – the Part III offences apply not only to money but also to other property. While Part III of the PTA applies only to Irish and certain kinds of international terrorism, Part III of the Act applies to all forms of terrorism.
26. In addition to replicating Part III of the PTA, Part III of the Act also introduces a new power for the police, customs officers and immigration officers to seize cash at borders and to seek forfeiture of the cash in civil proceedings. This is modelled on a power which already exists in Part III of the [Drug Trafficking Act 1994 \(c. 37\)](#).

Section 14: Terrorist property

27. This definition comes into play in the “money laundering” offence (section 18) and the power to seize and forfeit cash at borders (sections 25 and 28). *Subsection (1)* makes it clear that terrorist property can include both property to be used for terrorism and proceeds of acts of terrorism. *Subsection (2)(a)* makes explicit that the proceeds of an act of terrorism covers not only the money stolen in, say, a terrorist robbery, but also any money paid in connection with the commission of terrorist acts. *Subsection (2)(b)* makes explicit that any resources of a proscribed organisation are covered: not only the resources they use for bomb-making, arms purchase etc but also money they have set aside for non-violent purposes such as paying rent.

Sections 15–17: Fundraising, use, possession and funding arrangements

28. These sections correspond to sections 9 and 10 of the PTA. By virtue of section 1(5) of the Act the words “for the purposes of terrorism” can be taken to include “for the benefit of a proscribed organisation”. As a result, the offences of fund-raising, and using and possessing money, and entering into funding arrangements for a proscribed organisation (section 10 of the PTA) are subsumed into these sections.

Section 18: Money laundering

29. This section corresponds to section 11 of the PTA and has the same effect. Although it is entitled “money laundering” and is most likely to be used for money, it also applies to “laundering” type arrangements in respect of other property.

Section 19: Disclosure of information: duty

30. This section is based on section 18A of the PTA and has the same effect. It requires banks and other businesses to report any suspicion they may have that someone is

*These notes refer to the Terrorism Act 2000 (c.11)
which received Royal Assent on 20th July 2000*

laundering terrorist money or committing any of the other terrorist property offences in sections 15–18. *Subsection (1)(b)* ensures the offence is focused on suspicions which arise at work. *Subsection (5)* preserves the exemption in respect of legal advisers' privileged material.

31. Suspicions arising in home life were covered by section 18 of the PTA which the Government has decided, following Lord Lloyd, not to replicate.

Sections 20–21: Disclosure of information: permission; co-operation with the police

32. These sections correspond to section 12 of the PTA and have the same effect. Section 20 ensures that businesses can disclose information to the police without fear of breaching legal restrictions. *Subsection (1)* of section 21 allows for the activities of informants who may have to be involved with terrorist property if they are not to be found out and protects others who may innocently become involved. *Subsection (2)* makes it possible for someone involved with such property to avoid prosecution by telling the police as soon as is reasonably practicable (*subsection (3)*) and discontinuing his involvement if asked to do so by the police (*subsection (4)*).

Sections 22–23: Penalties and forfeiture

33. **Section 22** corresponds to section 13(1) of the PTA and has the same effect. Section 23 is based on section 13(2) of the PTA and has similar effect subject to one substantive modification. *Subsection (6)* allows for forfeiture of the proceeds of a terrorist property offence. This could arise in a case where an accountant prepared accounts on behalf of a proscribed organisation – thus facilitating the retention or control of the organisation's money – and was paid for doing so. The money he received in payment could not be forfeited under section 13(2) of the PTA because it was not intended or suspected for use in terrorism. It could not be confiscated under the **Criminal Justice Act 1988 (c. 33)** because that confiscation regime excludes terrorist property offences. *Subsection (6)* closes this loophole between the confiscation scheme in the 1988 Act and the counter-terrorist forfeiture scheme.

Sections 24–31: Seizure, detention and forfeiture of terrorist cash at borders

34. These sections are based on sections 42–48 of the **Drug Trafficking Act 1994 (c. 37)** which relate to drug trafficking money imported or exported in cash. The main difference (apart from applying the powers to terrorist rather than drug trafficking cash) is that the powers in the Drug Trafficking Act only apply to cash being taken across the UK's external borders, while those in the Act also apply to cash being taken from Northern Ireland to Great Britain and vice versa. As with drug trafficking, no criminal conviction is required.

Section 24: Interpretation

35. *Subsection (1)* allows the power to seize cash to be exercised by any of the agencies operating at borders: police, customs and immigration. This is to allow for the event that a customs or immigration officer is the first to find the cash. However, it is expected that for the most part the power will be exercised by the police. The definition of cash in *subsection (2)* is intended to cover the most readily realisable monetary instruments used by terrorists; the order-making power in *subsection (2)(e)* will enable the Secretary of State to add further monetary instruments as the need arises.

Section 25: Seizure and detention

36. Once cash has been seized, then under this section it can be detained for up to 48 hours. During that time the authorities must either seek continued detention or forfeiture. If neither of these occurs during the first 48 hours, the cash will be returned.

Sections 26–27: Continued detention of cash

37. A magistrate can allow continued detention for up to 3 months under *subsection (2) (b)* of section 26. A further application can be granted after the 3 months has expired, and so on, up to a maximum of two years (*subsection (4)*). In section 27, *subsection (1)* provides for any interest accruing on the cash, and *subsections (2)–(5)* for application to the court for a direction that the cash be released.

Sections 28–29: Forfeiture and appeal

38. This section provides for civil forfeiture proceedings in relation to the seized cash. Evidence that the cash is terrorist property is required to the civil standard (*subsection (2)* of section 28); proceedings for a criminal offence are not needed (*subsection (4)*) and the proceedings themselves are civil as opposed to criminal. Appeals must be lodged within 30 days, and the route of appeal is in England and Wales to the Crown Court; in Northern Ireland to the county court; and in Scotland to the Court of Session. A successful appeal will result in the cash being paid back, together with any accrued interest.
39. *Subsections (6)–(7)* provide for the situation where an organisation is deproscribed following a successful appeal to POAC, and a forfeiture order has been made in reliance (in whole or in part) on the fact that the organisation was proscribed. In such cases, the person whose cash has been forfeited may appeal at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force.