

ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 13: Miscellaneous

Third Pillar of the European Union

Section 111 Implementation of the third pillar

293. This section will allow a specific list of measures adopted under Title VI of the Treaty on European Union (Police and Judicial Co-operation in Criminal Matters) to be implemented by secondary legislation. The measures listed are all included in the European Union's anti-terrorism "road-map", a list of measures identified for urgent agreement and implementation after 11 September. The measures are: the 1995 and 1996 European Conventions on Extradition; three Framework Decisions on combating terrorism, on joint investigation teams and on the freezing of property and evidence; and the 2000 Convention on Mutual Assistance in Criminal Matters together with its Protocol.
294. The section follows closely the wording of section 2(2) of the European Communities Act 1972, which allows measures adopted under the Treaties establishing the European Communities and related treaties to be implemented by secondary legislation. Like the power in section 2(2) of the 1972 Act, the section enables such provision to be made as might be made by Act of Parliament but subject to a number of limitations. The power conferred by the section does not include power to raise taxes, to legislate retrospectively, or to create further legislative powers. The power to create new criminal offences is also limited. The powers conferred by the section are not exercisable after 30 June 2002.

Section 112 Third pillar: supplemental

295. This section sets out supplementary provisions concerning the exercise of the powers conferred by section 111.
296. The enabling power would be exercised by any Secretary of State, the Lord Chancellor, the Chancellor of the Exchequer or by the Devolved Administrations where the powers relate to devolved issues. The secondary legislation will be subject to the draft affirmative procedure.

Dangerous Substances

Section 113 Use of noxious substances to cause harm

297. Under this section it will become an offence for a person to use or threaten to use a biological, chemical, radioactive or other noxious substance to cause various kinds of

serious harm in a manner designed to influence the government or to intimidate the public. Offences under this section carry a sentence of up to 14 years and a fine.

Section 114 Hoaxes involving noxious substances or things

298. Section 51 of the Criminal Law Act 1977 (as amended by the Criminal Justice Act 1991) makes it an offence for someone to place or send any article intending to make another person believe that it is likely to explode or ignite and thereby cause personal injury or damage to property. It is also an offence for someone to communicate any information which he knows or believes to be false intending to make another person believe that a bomb is likely to explode or ignite. Section 63 of the act makes similar provision for Scotland. The Criminal Law (Amendment) Northern Ireland) Order 1977 created a similar offence in Northern Ireland.
299. These offences relate only to hoax explosive devices. Other hoaxes, such as sending powders or liquids through the post and claiming that they are harmful, are not covered. This section fills that gap
300. *Subsection (1)* makes it an offence to place anywhere or send any substance or article intending to make others believe that that it is likely to be or contain a noxious substance or thing which could endanger human life or health.
301. *Subsection (2)* makes it an offence for a person to falsely communicate any information to another that a noxious substance or thing is or will be in a place and so likely to cause harm to endanger human life or health.
302. *Subsection (3)* sets out the penalties for these offences. On summary conviction a person may be imprisoned for up to six months, or receive a fine up to the statutory maximum or both. On conviction on indictment a person may be imprisoned for up to seven years, or receive a fine or both.

Intelligence Services Act 1994

Section 116 Amendments of the Intelligence Services Act 1994

303. This amendment serves two purposes: it amends and extends to Government Communications Headquarters (GCHQ) the authorisation procedure which currently applies only to the Secret Intelligence Service (SIS) by adding their name to Section 7 of the Intelligence Services Act 1994; and it brings the definition of the prevention and detection of crime which applies to SIS into line with the definition used by the Security Service, as set out in the Regulation of Investigatory Powers Act 2000.
304. **Section 7** sets out the authorisation procedure for acts necessary for the proper discharge of the functions of the SIS which take place abroad. The amendment extends this authorisation to GCHQ, for the purpose of discharging its own functions, and allows both GCHQ and SIS to be authorised under section 7 to act in this country when the intention is for those actions to have an effect only on apparatus located abroad.
305. *Subsection (1)* adds GCHQ to the agencies entitled to seek authorisation under Section 7 of the Intelligence Service Act and ensures that safeguards are in place concerning GCHQ's functions and disclosures in relation to its activities under this section.
306. *Subsection (2)* makes an amendment to Section 7 which affects the location at which acts authorised under Section 7 may take place. Section 7, Subsection (1) provides that the acts to be authorised must take place abroad. This extra subsection provides that the authorisation procedure in Section 7 may also apply to acts undertaken in this country, if they are intended only to have an effect on apparatus located outside the British Islands or on material originating from such apparatus.
307. The definition of "apparatus" used here is the same as in the Regulation of Investigatory Powers Act 2000, i.e. any equipment, machinery or device, or any wire or cable.

308. *Subsection (3)* provides for the meaning of the prevention and detection of crime as set out in Section 81(5) of the Regulation of Investigatory Powers Act 2000 for the purposes of the provisions of that Act not contained in Chapter 1 of Part 1 to be applied to the Secret Intelligence Service. The same definition will therefore apply to the Secret Intelligence Service as applies to the Security Service in the Security Service Act 1989. The effect is to clarify that the Secret Intelligence Service can support evidence gathering activities.

Terrorism Act 2000

Section 117 Information about acts of terrorism

309. This section inserts a new section 38B in the Terrorism Act 2000 making the failure to disclose information about acts of terrorism a criminal offence. The new offence is similar to that which was found in section 18 of the Prevention of Terrorism (Temporary Provisions) Act 1989 which was repealed by the Terrorism Act 2000. Section 18 related only to acts of terrorism in Northern Ireland. The new offence has no such geographical limitation.
310. *Subsections (1) and (2)* of the new section 38B make it an offence for a person, subject to the defence in subsection (4), to fail to disclose information which he either knows or believes might help prevent another person carrying out an act of terrorism or might help in bringing a terrorist to justice in the UK. The words “an act of terrorism” are to be read with the definition of terrorism in section 1 of the Terrorism Act 2000 and include acts of terrorism anywhere in the world. *Subsection (3)* identifies the people to whom disclosure should be made - in England and Wales to a constable, in Scotland to a constable, in Northern Ireland to a constable or a member of Her Majesty's forces. *Subsection (4)* makes it a defence for a person to prove a head a reasonable excuse for not making the disclosure. *Subsection (5)* sets out the penalties for people found guilty of offences under this legislation: on conviction on indictment a person may be imprisoned for up to five years, or receive a fine or both; or on summary conviction a person may be imprisoned for up to six months or receive a fine not exceeding the statutory minimum (level 1 up to £200 on the scale) or both. *Subsection (6)* allows a person to be charged with the offence even if he was outside the United Kingdom at the time he became aware of the information.
311. *Subsection (3)* of section 117 amends the Terrorism Act 2000 to make it an offence for someone to disclose information to another person which would be likely to prejudice an investigation resulting from a disclosure under section 38B or to interfere with material that is likely to be relevant to such an investigation. The penalties for these offences are the same as for that under section 38B.

Section 118 Port and Airport controls for domestic travel

312. The section extends the existing powers under paragraphs 2 - 8 of Schedule 7 to the Terrorism Act 2000 to stop, question, detain and search people. *Subsection (2)* extends them to cover any person whose presence at a port an examining officer (a constable, immigration officer or customs officer) believes to be connected with their travelling on a flight within Great Britain or Northern Ireland. *Subsection (3)* extends them to cover any person on a ship or aircraft that has arrived at any place in Great Britain or Northern Ireland whether from within or outside Great Britain or Northern Ireland.
313. Similarly *subsection (4)* extends the powers in paragraphs 9 to 11 of that Schedule to search and detain goods (including any property and containers) to cover flights within Great Britain or Northern Ireland.

Section 119 Passenger information

314. Under Paragraph 17 of Schedule 7 to the Terrorism Act 2000, if an examining officer (a constable or immigration officer or customs officer) makes a written request to the

owners or agents of a ship or aircraft for information about passengers, crew or vehicles belonging to the passengers or crew the owners or agents must comply with the request as soon as is reasonably practicable. The provision only applies to the Common Travel Area (journeys between Great Britain, Northern Ireland, the Republic of Ireland and the Islands). The information to be collected must be specified by the Secretary of State.

315. The ATCS Act extends these powers to cover a ship or aircraft which arrives in any place in the United Kingdom, or which leaves or is expected to leave the United Kingdom irrespective of whether the travel is international or domestic. These extended powers apply to goods as well as passenger freight.

Section 120 Weapons training for terrorists

316. Section 54 of the Terrorism Act 2000 makes it an offence to provide, receive or invite another person to receive instruction or training in the use of firearms, explosives or chemical, biological or nuclear weapons. A person guilty of an offence under this section may be imprisoned for up to ten years or receive a fine or both. It is a defence for the person to be able to show their involvement was wholly for a purpose other than terrorism.
317. **Section 55** of the Act defines a biological weapon as anything to which section 1(1)(b) of the Biological Weapons Act 1974 applies, a chemical weapon as anything to which section 1 of the Chemical Weapons Act 1996 applies; and a nuclear weapon as a weapon which contains nuclear material as set out in the schedule to the Nuclear Materials (Offences) Act 1983.
318. *Subsection (1)* adds a new paragraph to sections 54 (1) and (2) of the Terrorism Act 2000 to cover training relating to radioactive material and weapons designed or adapted for the discharge of radioactive material.
319. *Subsection (2)* amends section 55 of the Terrorism Act 2000. Paragraph (a) substitutes a new definition for a biological weapon to include any biological agent or toxin which is in a form that can be used for hostile purposes. Paragraph (b) inserts a definition of a radioactive material as one capable of endangering life or causing harm to health. Paragraph (c) deletes the definition of a nuclear weapon, which is now out of date.

Section 121 Crown Court judges Northern Ireland

320. This section amends the Terrorism Act 2000 to substitute Crown Court judges for county court judges.

Section 122 Review of Act

321. Under this section the Home Secretary is required to appoint a committee of at least seven privy counsellors, who are required to complete the review and submit a report to the Home Secretary within two years of the act receiving Royal Assent i.e. by 13th December, 2003.
322. The Home Secretary is also required to lay a copy of the report before Parliament as soon as is reasonably practical after receipt.

Section 123 Effect of report

323. Unless a motion is made in each House of Parliament to consider the report within 6 months of the report being laid before Parliament, any provisions of this Act specified for this purpose in the report will cease to have effect. This would in effect time limit any provisions specified unless Parliamentary time has been made to debate the content of the report.