

TERRORISM ACT 2006

EXPLANATORY NOTES

COMMENTARY

Definitions

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

*These notes refer to the Terrorism Act 2006 (c.11)
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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.