

TERRORISM ACT 2006

EXPLANATORY NOTES

COMMENTARY

Definitions

Part 2

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.