

# **TERRORISM ACT 2006**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### *Definitions*

#### **Part 2**

#### ***Section 21 – Grounds of proscription***

99. Section 3 of the TACT gives the Secretary of State power to add an organisation to the list of proscribed organisations in Schedule 2 of that Act if he believes that the organisation is concerned in terrorism. The term “concerned in terrorism” is defined in section 3(5), and includes that the organisation promotes or encourages terrorism (section 3(5)(c)). Organisation is defined in section 121 of the TACT as including any association or combination of persons. A number of the offences in the TACT are dependent on an organisation being proscribed, for example, the offences in section 11 (membership of a proscribed organisation) and section 12 (support for a proscribed organisation). Also some of the powers in the TACT can be exercised on the basis that an organisation is proscribed, for example, the resources of a proscribed organisation can be seized as terrorist cash under Part 3 of the TACT (see in particular section 25).
100. **Section 21** widens the grounds of proscription. It provides that a group may be considered to promote or encourage terrorism under section 3(5)(c) if its activities include the unlawful glorification of terrorism or its activities are carried out in a manner that ensures that it is associated with statements containing unlawful glorification of terrorism. Glorification of conduct is unlawful if persons who may become aware of it could reasonably be expected to infer that the conduct is glorified as conduct that should be emulated in existing circumstances. As in Part 1 of the Act conduct and conduct that is illustrative of a type of conduct are both covered. Glorification and statement are both defined in similar terms to Part 1 of the Act. Glorification is defined to include praise and celebration. Statement is defined to include a communication without words consisting of sounds, images or both.

#### ***Section 22 – Name changes by proscribed organisations***

101. Section 3 of the TACT defines a proscribed organisation for the purposes of the TACT as an organisation listed in Schedule 2 to that Act or an organisation that operates under the same name as a listed organisation. Various offences under the TACT depend on an organisation being proscribed. This section deals with the situation in which an organisation is the same as an organisation that appears in Schedule 2 to the TACT but it is operating under a name that is different to that listed in Schedule 2 and the situation in which an organisation listed in Schedule 2 is operating under several names not all of which appear in Schedule 2.

## **Subsection (2)**

102. **Subsection (2)** amends section 3 of the TACT. New subsection (6) of section 3 provides that, if the Secretary of State believes that an organisation that is listed in Schedule 2 is operating under a name that is not specified in Schedule 2, or that an organisation is operating under a different name but is the same as a listed organisation, he can make an order to the effect that the name that does not appear in Schedule 2, is another name for the listed organisation. The effect of such an order is that the organisation included in the order will be treated as if it were listed in Schedule 2 under both the name already specified for it in the Schedule and the other name given in the order (new subsection (7)). This effect continues while the order is in force and the organisation is listed in Schedule 2. The Secretary of State has the power to revoke the order in new subsection (8) of section 3.
103. An order under these provisions is subject to the negative resolution procedure. This is in contrast to an order amending Schedule 2 which is subject to the affirmative resolution procedure.

## **Subsections (3) to (7)**

104. These subsections apply the existing provisions in the TACT for review of and appeal against proscription to an order that a name be treated as another name for a listed organisation. Section 4 of the TACT allows those who have an interest in an organisation being proscribed to apply to the Secretary of State to have an organisation de-proscribed. **Subsections (3) and (4)** of this section amend section 4 to allow similar applications in respect of an order that a name be treated as another name for a listed organisation. **Subsection (5)** includes orders to treat a name as another name for a listed organisation in section 5 of the TACT, which allows an appeal to the Proscribed Organisations Appeal Commission (POAC), if the Secretary of State refuses to revoke an order following an application under section 4. An appeal is also possible against POAC's decision under section 6 of the TACT although this does not require specific amendment by the section.
105. If an appeal is successful under section 5 then the Secretary of State is obliged to revoke his order as provided for in new section 5(5A) of the TACT to be inserted by **subsection (6)** of the section. **Subsection (7)** includes the new orders into section 7 of the TACT. Section 7 sets out the effect of a successful appeal on a conviction that was dependent on an organisation being proscribed.

## **Subsections (8) to (11)**

106. **Subsections (8) to (11)** make a number of amendments to the TACT that are consequential on the creation of the new type of order and its inclusion in the appeal process.

## **Section 23 – Extension of period of detention of terrorist suspects**

107. This section contains amendments to Schedule 8 to the TACT, which deals, among other things, with extension of detention prior to charging of those arrested under section 41 of the TACT. The original maximum period of detention of seven days was extended to a maximum of 14 days by section 306 of the Criminal Justice Act 2003.

## **Subsections (2), (5) and (11)**

108. **Subsection (2)** widens the group of people who may apply for a warrant of further detention under paragraph 29 of Schedule 8 and for an extension of detention under paragraph 36 of Schedule 8. At the moment only a police officer of at least rank of superintendent may make those applications. As amended, in England and Wales a Crown Prosecutor, in Scotland a procurator fiscal or the Lord Advocate, in Northern Ireland the Director of Public Prosecutions for Northern Ireland, and anywhere in the

UK a police officer of the rank of superintendent or above may apply for a warrant of further detention or for extension of the period of detention. As a consequence of this change **Subsection (5)** makes an amendment to paragraph 34(1) of Schedule 8 to the TACT. It substitutes the word “person” for “officer” in that provision, ensuring that all those listed in subsection (2) have the power to apply to the judge presiding over the extension of detention hearing to have information that forms part of that application withheld from a person to whom an application relates. **Subsection (11)** makes a further consequential change to substitute a new paragraph 37 into Schedule 8. Paragraph 37 provides that any detained person must be released if the grounds on which his continued detention was authorised are no longer met and there is no other reason for him to be held. The new paragraph 37 is expanded so that as well as referring to a police officer deciding if continued detention is justified it also refers to other people that may be in charge of the case.

### **Subsections (3) and (4)**

109. **Subsection (3)** amends paragraph 29(3) of Schedule 8 so that when a court agrees to an extension of the period of detention, the period of the extension will normally be seven days. This is subject to new sub-paragraph (3A). At the moment the extension can be for anything up to seven days. **Subsection (4)** inserts a new subparagraph (3A) into paragraph 29 that provides that the court may issue a warrant of further detention for less than seven days if either the application for the warrant specifies a shorter time period or the judicial authority is satisfied that there are circumstances that mean that an extension for as long as seven days is inappropriate.

### **Subsection (6)**

110. **Subsection (6)** amends, and inserts new sub-paragraphs (1A) and (1B) into paragraph 36 of Schedule 8, which deals with the extension of warrants of further detention. The new sub-paragraphs provide that, if an application is to extend detention beyond 14 days from the relevant time it must be made to a senior judge. If an application is to extend detention for no more than 14 days from the relevant time the application must be made to a judicial authority, unless an application has previously been made to a senior judge. At the moment all applications under paragraph 36 are made to a judicial authority. **Subsection (10)** inserts a definition of senior judge into paragraph 36. Senior judge is defined, in England, Wales and Northern Ireland as a judge of the High Court and, in Scotland as a judge of the High Court of Justiciary. A judicial authority is already defined in paragraph 29(4) of Schedule 8 as, in England and Wales, a District Judge (Magistrates’ Courts) who is designated for the purposes of Part 3 of Schedule 8 by the Lord Chancellor, in Scotland, a sheriff and, in Northern Ireland, a county court judge or a resident magistrate designated for the purposes of Part 3 of Schedule 8 by the Lord Chancellor. The relevant time is defined in paragraph 36(3B) of Schedule 8 as either, the time of a person’s arrest under section 41 of the TACT or, if he was detained under Schedule 7 to the TACT when he was arrested under section 41, the time his examination under that Schedule began.

### **Subsection (7)**

111. **Subsection (7)** further amends paragraph 36 of Schedule 8. The amendments have two effects. Firstly, each period of extension must be for seven days unless the application asks for a shorter period or the judicial authority (or senior judge) to which the application is made is satisfied that there are circumstances which mean that it would be inappropriate to detain the suspect for a further seven days. Secondly, the maximum period that a warrant of further detention can last in total is extended from 14 days to 28 days. In cases where detention for a further seven days would exceed the 28 day limit, the senior judge can only authorise continued detention up to the 28 day limit.

### **Subsections (8) and (9)**

112. **Subsection (8)** amends paragraph 36(4) of Schedule 8 to provide that paragraphs 30(3) and 31 to 34 of Schedule 8 (which deal with notice of applications, grounds for extension, representation and withholding of information) are to apply to applications to senior judges as they apply to applications to judicial authorities but references to judicial authority are to be read as references to senior judge. **Subsection (9)** makes a consequential amendment to paragraph 36(5).

### **Subsection (12)**

113. **Subsection (12)** sets out that the amendments made to the procedures for extension of detention under Schedule 8 of the TACT shall not apply if the arrest of the person under detention occurred before the commencement of this section of the Act, or if his examination under Schedule 7 to the TACT began before the commencement of this section of the Act.

### **Section 24 – Grounds for extending detention**

114. This section amends the grounds for authorising extended detention under Schedule 8 to the TACT, for review officers (during the first 48 hours of detention) and for the judicial authority or senior judge (thereafter).

### **Subsection (1)**

115. At the moment paragraph 23(1) of Schedule 8 lists a number of grounds on which a review officer can decide to continue to detain a person. **Subsection (1)** adds to that list. It sets out that a review officer may extend detention if he is satisfied that it is necessary pending the result of an examination or analysis of any relevant evidence or an examination or analysis of anything that may result in relevant evidence being obtained. An examination or analysis would include a DNA test.

### **Subsections (2) and (3)**

116. **Subsections (2) and (3)** make the same change to the grounds for issuing a warrant of further detention in paragraph 32 of Schedule 8. By virtue of paragraph 36(4) of Schedule 8 this new ground will also apply in relation to an application for extension of a warrant of further detention.

### **Subsection (6)**

117. **Subsection (6)** sets out that the amendments made to the grounds for extension of detention under Schedule 8 to the TACT shall not apply if the arrest of the person under detention occurred before the commencement of this section of the Act, or if his examination under Schedule 7 to the TACT began before the commencement of this section of the Act.

### **Section 25 – Expiry or renewal of extended maximum detention period**

118. The effect of Section 25 is that, insofar as they extend the maximum period a terrorist suspect may be detained under the TACT prior to charge, the amendments made by Section 23 will cease to have effect one year after their commencement unless continued in force by an order made by the Secretary of State. In other words, if the Secretary of State does not make an order the maximum period of detention will revert to 14 days.

### **Subsections (1) to (6)**

119. **Subsection (1)** provides that Section 25 shall apply if more than a year has passed since the commencement of Section 23, and an order is not currently in force disapplying this section. **Subsection (2)** sets out that the Secretary of State may make an order

by statutory instrument to disapply this section for up to a period of one year. The power can be used more than once. **Subsection (3)** provides that, if no order disapplying this section is made under subsection (2), the maximum period that an individual can be detained under the TACT is limited to 14 days. It further provides that in that situation the consequential modifications to paragraphs 36 and 37 of Schedule 8, as set out in **subsection (4)**, will have effect. The effect of those modifications is that if the maximum period of detention reverts to 14 days all applications for extension of detention will be made to a judicial authority. This is because under the provisions inserted into Schedule 8 to the TACT by Section 23 a senior judge is only concerned in applications for extension of detention beyond 14 days. If it is not possible to extend detention beyond 14 days then there is no need for a senior judge to be involved. **Subsection (5)** sets out that in the case of an individual who has been detained for a period longer than 14 days under the TACT at any point in time at which this section applies, the person with custody of that individual must release him immediately, even if his detention had been authorised to continue for longer at a time prior to this section applying. **Subsection (6)** sets out that the order disapplying Section 25 of the Act will be subject to the affirmative resolution procedure.

### ***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.

### **Section 27 – All premises warrants: Scotland**

127. This section provides for similar changes to those made in section 26 to provide for all premises warrants in terrorist investigations in Scotland.

### **Section 28 – Search, Seizure and forfeiture of terrorist publications**

128. This section creates a power of seizure and forfeiture in relation to terrorist publications within the meaning of section 2.

### **Subsections (1) and (2)**

129. **Subsection (1)** grants a justice of the peace the power to issue a warrant authorising a constable to enter and search premises and seize any article on those premises that

meets the test in subsection (2) if he is satisfied that there are reasonable grounds for suspecting that an article that meets the test in subsection (2) is on those premises. The test in **subsection (2)** is that the article is likely to be subject to conduct of the kind mentioned in section 2(2)(a) to (e) (distribution etc.) and it would be treated as a terrorist publication (as defined in section 2(3)).

### **Subsection (3)**

130. **Subsection (3)** entitles the person exercising the power conferred by the warrant to use reasonable force in doing so.

### **Subsections (4) and (5)**

131. If a warrant is granted on the basis of an information laid by or on behalf of the Director of Public Prosecutions (“the DPP”), or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland, the articles seized under it are liable to be forfeited under the procedure in Schedule 2 (as introduced by **subsection (8)**). **Subsection (4)** states that items seized under the authority of a warrant may be removed by a constable to such a place as he thinks fit, and may be retained there until returned or otherwise disposed of in accordance with procedures outlined. **Subsection (5)** sets out that only those items seized under a warrant issued following an information laid by the DPP or the DPP for Northern Ireland shall be liable to forfeiture. Subsection (5) also provides that if forfeited, articles may be destroyed or disposed of by a constable in whatever manner he sees fit.

### **Subsections (6) and (7)**

132. **Subsection (6)** amends the Criminal Justice and Police Act 2001 to include the powers of seizure in this section in Parts 1 and 3 of Schedule 1 of that Act. This will enable a bulk of material to be taken away to be read, rather than being examined on the premises, to see if it should be seized. This is needed for cases where large numbers of publications are held at a set of premises. **Subsection (7)** sets out that existing rules for seized property contained in the Police (Property) Act 1897, and the Police (Northern Ireland) Act 1998 shall not apply to articles seized under authority of the powers outlined in this section as the Act provides specific powers for the treatment of seized property.

### **Subsections (9) and (10)**

133. **Subsection (9)** provides a number of definitions. “Article” is defined as having the same meaning as in Part 1 of this Act (defined in Section 20 (interpretation of Part 1)). “Premises” is defined as having the same meaning as in section 23 of the [Police and Criminal Evidence Act 1984 \(c.60\)](#). The definition in that Act defines premises as including any place and in particular including any vehicle, vessel, aircraft, hovercraft, offshore installation, renewable energy installation, tent or movable structure. **Subsection (10)** modifies section 28 in its application to Scotland.