



Counter-Terrorism Act 2008

2008 CHAPTER 28

PART 3

PROSECUTION AND PUNISHMENT OF TERRORIST OFFENCES

Jurisdiction

28 Jurisdiction to try offences committed in the UK

- (1) Where an offence to which this section applies is committed in the United Kingdom—
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
 - (b) the offence may for all incidental purposes be treated as having been committed at any such place.
- (2) The section applies to—
- (a) an offence under any of the following provisions of the Terrorism Act 2000 (c. 11)—
 - sections 11 to 13 (offences relating to proscribed organisations),
 - sections 15 to 19, 21A and 21D (offences relating to terrorist property),
 - sections 38B and 39 (disclosure of and failure to disclose information about terrorism),
 - section 47 (offences relating to stop and search powers),
 - section 51 (parking a vehicle in contravention of an authorisation or restriction),
 - section 54 (weapons training),
 - sections 56 to 58A (directing terrorism and possessing things or collecting information for the purposes of terrorism),
 - section 116 (failure to stop a vehicle when required to do so),
 - paragraph 1 of Schedule 6 (failure to provide customer information in connection with a terrorist investigation),

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- paragraph 18 of Schedule 7 (offences in connection with port and border controls);
- (b) an offence under section 113 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (use of noxious substances or things to cause harm and intimidate);
 - (c) an offence under any of the following provisions of the Terrorism Act 2006 (c. 11)—
 - sections 1 and 2 (encouragement of terrorism),
 - sections 5, 6 and 8 (preparation and training for terrorism),
 - sections 9, 10 and 11 (offences relating to radioactive devices etc).
- (3) The Secretary of State may by order amend subsection (2).
- (4) Any such order is subject to affirmative resolution procedure.
- (5) The power conferred by subsection (3) may be exercised so as to add offences to subsection (2) only if it appears to the Secretary of State necessary to do so for the purpose of dealing with terrorism.
- (6) In section 1 of the Justice and Security (Northern Ireland) Act 2007 (c. 6) (issue of certificate for trial without a jury), after subsection (6) insert—
- “(6A) The Director of Public Prosecutions for Northern Ireland may not issue a certificate under subsection (2) if—
- (a) the proceedings are taken in Northern Ireland only by virtue of section 28 of the Counter-Terrorism Act 2008, and
 - (b) it appears to the Director that the only condition that is met is condition 4.”.

Consent to prosecution

29 Consent to prosecution of offence committed outside UK

In section 117(2A) of the Terrorism Act 2000 (c. 11) and in section 19(2) of the Terrorism Act 2006 (cases in which permission of Attorney General or Advocate General for Northern Ireland required before DPP gives consent to prosecution), after “committed” insert “outside the United Kingdom or”.

Sentencing

30 Sentences for offences with a terrorist connection: England and Wales

- (1) This section applies where a court in England and Wales is considering for the purposes of sentence the seriousness of an offence specified in Schedule 2 (offences where terrorist connection to be considered).
- (2) If having regard to the material before it for the purposes of sentencing it appears to the court that the offence has or may have a terrorist connection, the court must determine whether that is the case.

- (3) For that purpose the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence.
- (4) If the court determines that the offence has a terrorist connection, the court—
 - (a) must treat that fact as an aggravating factor, and
 - (b) must state in open court that the offence was so aggravated.
- (5) In this section “sentence”, in relation to an offence, includes any order made by a court when dealing with a person in respect of the offence.
- (6) This section has effect in relation only to offences committed on or after the day it comes into force.

31 Sentences for offences with a terrorist connection: Scotland

- (1) This section applies where in Scotland, in relation to an offence specified in Schedule 2 (offences where terrorist connection to be considered)—
 - (a) it is libelled in an indictment, and
 - (b) proved,that the offence has been aggravated by reason of having a terrorist connection.
- (2) Where this section applies, the court must take the aggravation into account in determining the appropriate sentence.
- (3) Where the sentence imposed by the court in respect of the offence is different from that which the court would have imposed if the offence had not been aggravated by reason of having a terrorist connection, the court must state the extent of, and the reasons for, the difference.
- (4) For the purposes of this section, evidence from a single source is sufficient to prove that an offence has been aggravated by reason of having a terrorist connection.
- (5) This section has effect in relation only to offences committed on or after the day it comes into force.

32 Sentences for offences with a terrorist connection: armed forces

- (1) This section applies where a service court is considering for the purposes of sentence the seriousness of a service offence as respects which the corresponding civil offence is an offence specified in Schedule 2.
- (2) If having regard to the material before it for the purposes of sentencing it appears to the court that the offence has or may have a terrorist connection, the court must determine whether that is the case.
- (3) For that purpose the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence.
- (4) If the court determines that the offence has a terrorist connection, the court—
 - (a) must treat that fact as an aggravating factor, and
 - (b) must state in open court that the offence was so aggravated.

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- (5) This section has effect in relation only to offences committed on or after the day it comes into force.

33 Power to amend list of offences where terrorist connection to be considered

- (1) The Secretary of State may by order amend Schedule 2 (offences where terrorist connection to be considered).
- (2) Any such order is subject to affirmative resolution procedure.
- (3) An order adding an offence to that Schedule applies only in relation to offences committed after the order comes into force.

Forfeiture

34 Forfeiture: terrorist property offences

For section 23 of the Terrorism Act 2000 (c. 11) (forfeiture) substitute—

“Forfeiture

23 Forfeiture: terrorist property offences

- (1) The court by or before which a person is convicted of an offence under any of sections 15 to 18 may make a forfeiture order in accordance with the provisions of this section.
- (2) Where a person is convicted of an offence under section 15(1) or (2) or 16, the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
- (a) had been used for the purposes of terrorism, or
 - (b) they intended should be used, or had reasonable cause to suspect might be used, for those purposes.
- (3) Where a person is convicted of an offence under section 15(3) the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
- (a) had been used for the purposes of terrorism, or
 - (b) which, at that time, they knew or had reasonable cause to suspect would or might be used for those purposes.
- (4) Where a person is convicted of an offence under section 17 or 18 the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
- (a) had been used for the purposes of terrorism, or
 - (b) was, at that time, intended by them to be used for those purposes.
- (5) Where a person is convicted of an offence under section 17 the court may order the forfeiture of the money or other property to which the arrangement in question related, and which—

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- (a) had been used for the purposes of terrorism, or
 - (b) at the time of the offence, the person knew or had reasonable cause to suspect would or might be used for those purposes.
- (6) Where a person is convicted of an offence under section 18 the court may order the forfeiture of the money or other property to which the arrangement in question related.
- (7) Where a person is convicted of an offence under any of sections 15 to 18, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.”.

35 Forfeiture: other terrorism offences and offences with a terrorist connection

- (1) After section 23 of the Terrorism Act 2000 (c. 11) (forfeiture: terrorist property offences) insert—

“23A Forfeiture: other terrorism offences and offences with a terrorist connection

- (1) The court by or before which a person is convicted of an offence to which this section applies may order the forfeiture of any money or other property in relation to which the following conditions are met—
- (a) that it was, at the time of the offence, in the possession or control of the person convicted; and
 - (b) that—
 - (i) it had been used for the purposes of terrorism,
 - (ii) it was intended by that person that it should be used for the purposes of terrorism, or
 - (iii) the court believes that it will be used for the purposes of terrorism unless forfeited.
- (2) This section applies to an offence under—
- (a) any of the following provisions of this Act—
 - section 54 (weapons training);
 - section 57, 58 or 58A (possessing things and collecting information for the purposes of terrorism);
 - section 59, 60 or 61 (inciting terrorism outside the United Kingdom);
 - (b) any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
 - section 2 (dissemination of terrorist publications);
 - section 5 (preparation of terrorist acts);
 - section 6 (training for terrorism);
 - sections 9 to 11 (offences involving radioactive devices or materials).
- (3) This section applies to any ancillary offence (as defined in section 94 of the Counter-Terrorism Act 2008) in relation to an offence listed in subsection (2).

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- (4) This section also applies to an offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered) as to which—
 - (a) in England and Wales, the court dealing with the offence has determined, in accordance with section 30 of that Act, that the offence has a terrorist connection;
 - (b) in Scotland, it has been proved, in accordance with section 31 of that Act, that the offence has a terrorist connection.
- (5) The Secretary of State may by order amend subsection (2).
- (6) An order adding an offence to subsection (2) applies only in relation to offences committed after the order comes into force.”.
- (2) In section 123 of that Act (orders and regulations)—
 - (a) in subsection (4) (instruments subject to affirmative resolution procedure), after paragraph (a) insert—
 - “(aa) section 23A(5);”;
 - (b) in subsection (5), for “paragraph (b)” substitute “paragraph (aa) or (b)”.

36 Forfeiture: supplementary provisions

After section 23A of the Terrorism Act 2000 (c. 11) (inserted by section 35 above), insert—

“23B Forfeiture: supplementary provisions

- (1) Before making an order under section 23 or 23A, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under that section.
- (2) In considering whether to make an order under section 23 or 23A in respect of any property, a court shall have regard to—
 - (a) the value of the property, and
 - (b) the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making).
- (3) A court in Scotland must not make an order under section 23 or 23A except on the application of the prosecutor—
 - (a) in proceedings on indictment, when the prosecutor moves for sentence, and
 - (b) in summary proceedings, before the court sentences the accused;
 and for the purposes of any appeal or review, an order under either of those sections made by a court in Scotland is a sentence.
- (4) Schedule 4 makes further provision in relation to forfeiture orders under section 23 or 23A.”.

37 Forfeiture: application of proceeds to compensate victims

- (1) In Part 1 of Schedule 4 to the Terrorism Act 2000 (c. 11) (forfeiture orders: England and Wales), after paragraph 4 insert—

“Application of proceeds to compensate victims

- 4A (1) Where a court makes a forfeiture order in a case where—
- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
 - (b) any such offence is taken into consideration by the court in determining sentence,
- the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.
- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—
- (a) any forfeited money, and
 - (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation,
- reduced by the amount of any payment under paragraph 2(1)(d) or 3(1).
- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender’s means it would have made a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 under which the offender would have been required to pay compensation of an amount not less than the specified amount.”.

- (2) In Part 2 of that Schedule (forfeiture orders: Scotland), after paragraph 17 insert—

“Application of proceeds to compensate victims

- 17A (1) Where a court makes a forfeiture order in a case where—
- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
 - (b) any such offence is taken into consideration by the court in determining sentence,
- the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.
- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—
- (a) any forfeited money, and
 - (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation,
- reduced by the amount of any payment under paragraph 16(1)(c) or 17(2).
- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender’s means it would have

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made a compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995 under which the offender would have been required to pay compensation of an amount not less than the specified amount.”.

- (3) In Part 3 of that Schedule (forfeiture orders: Northern Ireland), after paragraph 32 insert—

“Application of proceeds to compensate victims

32A (1) Where a court makes a forfeiture order in a case where—

- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
- (b) any such offence is taken into consideration by the court in determining sentence,

the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.

- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—

- (a) any forfeited money, and
- (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation,

reduced by the amount of any payment under paragraph 30(1)(d) or 31(1).

- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender’s means it would have made a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 under which the offender would have been required to pay compensation of an amount not less than the specified amount.”.

38 Forfeiture: other amendments

- (1) For section 120A of the Terrorism Act 2000 (c. 11) (supplemental powers of the court in respect of forfeiture orders) substitute—

“120A Supplementary powers of forfeiture

- (1) A court by or before which a person is convicted of an offence under a provision mentioned in column 1 of the following table may order the forfeiture of any item mentioned in column 2 in relation to that offence.

<i>Offence</i>	<i>Items liable to forfeiture</i>
Section 54 (weapons training)	Anything that the court considers to have been in the possession of the person for purposes connected with the offence.
Section 57 (possession for terrorist purposes)	Any article that is the subject matter of the offence.

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<i>Offence</i>	<i>Items liable to forfeiture</i>
Section 58 (collection of information)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.
Section 58A (eliciting, publishing or communicating information about members of armed forces etc)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.

- (2) Before making an order under this section, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under this section.
 - (3) An order under this section does not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).
 - (4) Where a court makes an order under this section, it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture, including, in particular, provision relating to the retention, handling, disposal or destruction of what is forfeited.
 - (5) Provision made by virtue of subsection (4) may be varied at any time by the court that made it.
 - (6) The power of forfeiture under this section is in addition to any power of forfeiture under section 23A.”
- (2) In section 7 of the Terrorism Act 2006 (c. 11), after subsection (6) insert—
- “(7) The power of forfeiture under this section is in addition to any power of forfeiture under section 23A of the Terrorism Act 2000.”.
- (3) After section 11 of the Terrorism Act 2006 (terrorist threats relating to devices, materials or facilities) insert—

“11A Forfeiture of devices, materials or facilities

- (1) A court by or before which a person is convicted of an offence under section 9 or 10 may order the forfeiture of any radioactive device or radioactive material, or any nuclear facility, made or used in committing the offence.
- (2) A court by or before which a person is convicted of an offence under section 11 may order the forfeiture of any radioactive device or radioactive material, or any nuclear facility, which is the subject of—
 - (a) a demand under subsection (1) of that section, or
 - (b) a threat falling within subsection (3) of that section.
- (3) Before making an order under this section, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under this section.

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- (4) An order under this section does not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).
- (5) Where a court makes an order under this section, it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture, including, in particular, provision relating to the retention, handling, disposal or destruction of what is forfeited.
- (6) Provision made by virtue of subsection (5) may be varied at any time by the court that made it.
- (7) The power of forfeiture under this section is in addition to any power of forfeiture under section 23A of the Terrorism Act 2000.”.

39 Forfeiture: consequential amendments

Schedule 3 contains amendments consequential on those made by sections 34 to 38.