



# Counter-Terrorism Act 2008

## 2008 CHAPTER 28

### PART 7

#### MISCELLANEOUS

#### *Inquiries*

#### **74 Inquiries: intercept evidence**

- (1) In section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of intercepted communications etc from legal proceedings), in subsection (7), for paragraph (c) substitute—
  - “(c) a disclosure to the panel of an inquiry held under the Inquiries Act 2005 or to a person appointed as counsel to such an inquiry where, in the course of the inquiry, the panel has ordered the disclosure to be made to the panel alone or (as the case may be) to the panel and the person appointed as counsel to the inquiry; or”.
- (2) This section has effect in relation to inquiries under the Inquiries Act 2005 (c. 12) that have begun, but have not come to an end, before the day on which it comes into force as well as to such inquiries beginning or on after that day.
- (3) Section 14 of the Inquiries Act 2005 (end of inquiry) has effect for determining when an inquiry under that Act comes to an end for those purposes.

#### *Amendment of definition of “terrorism” etc*

#### **75 Amendment of definition of “terrorism” etc**

- (1) In the provisions listed below (which define “terrorism”, or make similar provision, and require that the use or threat of action is made for the purpose of advancing a political, religious or ideological cause), after “religious” insert “, racial”.
- (2) The provisions are—

- (a) section 1(1)(c) of the Terrorism Act 2000 (c. 11),
- (b) section 113A(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24),
- (c) paragraph 4(2)(c) of Schedule 21 to the Criminal Justice Act 2003 (c. 44),
- (d) Article 2(3)(c) of the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657),
- (e) Article 4(1)(c) of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (S.I. 2002/1822),
- (f) Article 2(1)(a)(iii) of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366),
- (g) Article 3(1) of the Terrorism (United Nations Measures) (Isle of Man) Order 2001 (S.I. 2001/3364),
- (h) Article 3(1) of the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (S.I. 2001/3363).

*Terrorist offences*

**76 Offences relating to information about members of armed forces etc**

- (1) After section 58 of the Terrorism Act 2000 (collection of information) insert—

**“58A Eliciting, publishing or communicating information about members of armed forces etc**

- (1) A person commits an offence who—
- (a) elicits or attempts to elicit information about an individual who is or has been—
    - (i) a member of Her Majesty’s forces,
    - (ii) a member of any of the intelligence services, or
    - (iii) a constable,
 which is of a kind likely to be useful to a person committing or preparing an act of terrorism, or
  - (b) publishes or communicates any such information.
- (2) It is a defence for a person charged with an offence under this section to prove that they had a reasonable excuse for their action.
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both;
  - (b) on summary conviction—
    - (i) in England and Wales or Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
    - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.
- (4) In this section “the intelligence services” means the Security Service, the Secret Intelligence Service and GCHQ (within the meaning of section 3 of the Intelligence Services Act 1994 (c. 13)).

- (5) Schedule 8A to this Act contains supplementary provisions relating to the offence under this section.”.
- (2) In the application of section 58A in England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) the reference in subsection (3)(b)(i) to 12 months is to be read as a reference to 6 months.
- (3) In section 118 of the Terrorism Act 2000 (c. 11) (defences), in subsection (5)(a) after “58,” insert “58A,”.
- (4) After Schedule 8 to the Terrorism Act 2000 insert the Schedule set out in Schedule 8 to this Act.

## **77 Terrorist property: disclosure of information about possible offences**

- (1) Part 3 of the Terrorism Act 2000 (terrorist property) is amended as follows.
- (2) In section 19(1) (duty to disclose belief or suspicion that offence committed), in paragraph (b) for “comes to his attention in the course of a trade, profession, business or employment” substitute—
  - “comes to his attention—
  - (i) in the course of a trade, profession or business, or
  - (ii) in the course of his employment (whether or not in the course of a trade, profession or business).”.
- (3) After section 22 insert—

### **“22A Meaning of “employment”**

In sections 19 to 21B—

- (a) “employment” means any employment (whether paid or unpaid) and includes—
    - (i) work under a contract for services or as an office-holder,
    - (ii) work experience provided pursuant to a training course or programme or in the course of training for employment, and
    - (iii) voluntary work;
  - (b) “employer” has a corresponding meaning.”.
- (4) So far as the amendment in subsection (3) above extends any provision of sections 19 to 21B of the Terrorism Act 2000 involving belief or suspicion to cases to which that provision did not previously apply, that provision applies where the belief or suspicion is held after subsection (3) above comes into force even if based on information that came to the person’s attention before that subsection was in force.

In any such case sections 19(2), 21(3) and 21A(4) of that Act (duty to make disclosure as soon as is reasonably practicable) are to be read as requiring the person to act as soon as is reasonably practicable after subsection (3) above comes into force.

### *Control orders*

#### **78 Control orders: powers of entry and search**

(1) After section 7 of the Prevention of Terrorism Act 2005 (c. 2) insert—

##### **“7A Powers of entry and search: absconding**

- (1) If a constable reasonably suspects that the controlled person has absconded, the constable may enter (if necessary by force) and search premises to which this section applies—
  - (a) for the purpose of determining whether the person has absconded;
  - (b) if it appears that the person has absconded, for material that may assist in the pursuit and arrest of the controlled person.
- (2) The premises to which this section applies are—
  - (a) the controlled person’s place of residence;
  - (b) other premises to which the controlled person is required to grant access in accordance with an obligation imposed by or under the control order;
  - (c) any premises—
    - (i) to which the controlled person has previously been required to grant access in accordance with an obligation imposed by or under a control order, and
    - (ii) with which there is reason to believe that the controlled person is or was recently connected.

##### **7B Powers of entry and search: failure to grant access to premises**

- (1) This section applies where a constable reasonably suspects that the controlled person is not granting access to premises, as required by an obligation imposed by or under the control order, at a time when the controlled person is required, by an obligation so imposed, to be at those premises.
- (2) The constable may enter (if necessary by force) and search the premises—
  - (a) for the purpose of determining whether any of the obligations imposed by or under the control order have been contravened;
  - (b) if it appears that an obligation has been contravened, for material that may assist in the investigation of the contravention.

##### **7C Powers of entry and search: monitoring compliance with order**

- (1) A constable may apply for the issue of a warrant under this section for the purposes of determining whether the controlled person is complying with the obligations imposed by or under a control order.
- (2) The application must be made—
  - (a) in England and Wales, to a justice of the peace;
  - (b) in Scotland, to the sheriff;
  - (c) in Northern Ireland, to a lay magistrate.

- (3) A warrant under this section shall authorise any constable to enter (if necessary by force) and search premises to which this section applies that are specified in the warrant.
  - (4) The premises to which this section applies are—
    - (a) the controlled person’s place of residence;
    - (b) other premises to which the controlled person is required to grant access in accordance with an obligation imposed by or under the control order;
    - (c) any premises—
      - (i) to which the controlled person has previously been required to grant access in accordance with an obligation imposed by or under a control order, and
      - (ii) with which there is reason to believe that the controlled person is or was recently connected.
  - (5) An application under this section may only be granted if the justice of the peace, the sheriff or the lay magistrate is satisfied that the issue of the warrant is necessary for the purposes of determining whether the controlled person is complying with the obligations imposed by or under the control order.”.
- (2) In section 9 of that Act (offences)—
    - (a) after subsection (3) insert—

“(3A) A person who intentionally obstructs the exercise by a constable of a power conferred by section 7A or 7B or by a warrant under section 7C commits an offence.”;
    - (b) in subsection (7) after “subsection (3)” insert “or (3A)”.
  - (3) These amendments have effect as from the commencement of this section and apply regardless of when the control order was made.

## **79 Control orders: meaning of involvement in terrorism-related activity**

- (1) In section 1(9) of the Prevention of Terrorism Act 2005 (c. 2) (meaning of involvement in terrorism-related activity), in paragraph (d), for “to be involved in terrorism-related activity” substitute “by the individual concerned to be involved in conduct falling within paragraphs (a) to (c)”.
- (2) This amendment shall be deemed always to have had effect.

## **80 Time allowed for representations by controlled person**

- (1) Section 3 of the Prevention of Terrorism Act 2005 (supervision by court of making of non-derogating control orders) is amended as follows.
- (2) In subsection (7) (opportunity for individual to make representations about directions given by the court), omit “within 7 days of the court’s giving permission or (as the case may be) making its determination on the reference”.
- (3) After that subsection insert—

“(7A) The individual must be given the opportunity to make those representations—

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*Status: This is the original version (as it was originally enacted).*

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- (a) in the case of directions under subsection (2)(c), within 7 days of notice of the terms of the control order being delivered to the individual in accordance with section 7(8);
  - (b) in the case of directions given under subsection (6)(b) or (c), within 7 days of the court making its determination on the reference.”.
- (4) These amendments apply in relation to control orders made after this section comes into force.

## **81 Application for anonymity for controlled person**

- (1) In the Schedule to the Prevention of Terrorism Act 2005 (c. 2) (control order proceedings etc), paragraph 5 (application for anonymity for controlled person) is amended as follows.
- (2) In sub-paragraph (1)(a) omit “, at any time after a control order has been made,”.
- (3) After sub-paragraph (3) insert—
- “(4) In relation to a time before the control order has been made references in this paragraph to “the controlled person” shall be read as references to the person in respect of whom the Secretary of State has made an application to the court for (as the case may be)—
- (a) permission to make a non-derogating control order under section 3(1)(a), or
  - (b) the making of a derogating control order under section 4(1).”.
- (4) These amendments shall be deemed always to have had effect.

### *Pre-charge detention of terrorist suspects*

## **82 Pre-charge detention: minor amendments**

- (1) In paragraph 9 of Schedule 8 to the Terrorism Act 2000 (direction that detained person may consult solicitor only within sight and hearing of qualified officer), for sub-paragraph (3) (grounds on which direction may be given) substitute—
- “(3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing—
- (a) that, unless the direction is given, the exercise of the right by the detained person will have any of the consequences specified in paragraph 8(4), or
  - (b) that the detained person has benefited from his criminal conduct and that, unless the direction is given, the exercise of the right by the detained person will hinder the recovery of the value of the property constituting the benefit.”.
- (2) In paragraph 29(4) of that Schedule (meaning of “judicial authority”), in paragraphs (a) and (c) omit “after consulting the Lord Chancellor”.

### *Forfeiture of terrorist cash*

#### **83 Forfeiture of terrorist cash: determination of period for which cash may be detained**

- (1) Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (forfeiture of terrorist cash) is amended as follows.
- (2) In paragraph 3 (detention of seized cash), after sub-paragraph (1) (which specifies the period for which cash seized may initially be detained) insert—
  - “(1A) In determining the period of 48 hours specified in sub-paragraph (1) there shall be disregarded—
    - (a) any Saturday or Sunday;
    - (b) Christmas Day;
    - (c) Good Friday;
    - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the cash is seized;
    - (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in the sheriff court district in which the cash is seized.”.
- (3) In paragraphs 4(1) and 10(2) (which refer to the period specified in paragraph 3(1)), after “48 hours” insert “(determined in accordance with paragraph 3(1A))”.
- (4) The amendments in this section apply in relation to cash seized after this section comes into force.

#### **84 Forfeiture of terrorist cash: appeal against decision in forfeiture proceedings**

- (1) In Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (forfeiture of terrorist cash), for paragraph 7 (appeal against forfeiture) substitute—

##### *“Appeal against decision in forfeiture proceedings*

- 7 (1) A party to proceedings for an order under paragraph 6 (“a forfeiture order”) who is aggrieved by a forfeiture order made in the proceedings or by the decision of the court or sheriff not to make a forfeiture order may appeal—
  - (a) in England and Wales, to the Crown Court;
  - (b) in Scotland, to the sheriff principal;
  - (c) in Northern Ireland, to a county court.
- (2) The appeal must be brought before the end of the period of 30 days beginning with the date on which the order is made or, as the case may be, the decision is given.

This is subject to paragraph 7A (extended time for appealing in certain cases of deproscription).
- (3) The court or sheriff principal hearing the appeal may make any order that appears to the court or sheriff principal to be appropriate.

- (4) If an appeal against a forfeiture order is upheld, the court or sheriff principal may order the release of the cash.

*Extended time for appealing in certain cases where deproscription order made*

- 7A (1) This paragraph applies where—
- (a) a successful application for a forfeiture order relies (wholly or partly) on the fact that an organisation is proscribed,
  - (b) an application under section 4 of the Terrorism Act 2000 for a deproscription order in respect of the organisation is refused by the Secretary of State,
  - (c) the forfeited cash is seized under this Schedule on or after the date of the refusal of that application,
  - (d) an appeal against that refusal is allowed under section 5 of that Act,
  - (e) a deproscription order is made accordingly, and
  - (f) if the order is made in reliance on section 123(5) of that Act, a resolution is passed by each House of Parliament under section 123(5)(b).
- (2) Where this paragraph applies, an appeal under paragraph 7 above against the forfeiture order may be brought at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force.
- (3) In this paragraph a “deproscription order” means an order under section 3(3)(b) or (8) of the Terrorism Act 2000.”.

- (2) This amendment applies where the order or decision of the court or sheriff against which the appeal is brought is made or given after this section comes into force.

*Costs of policing at gas facilities*

**85 Costs of policing at gas facilities: England and Wales**

- (1) This section applies where the Secretary of State considers—
- (a) that the provision of extra police services at a gas facility in England or Wales is necessary because of a risk of loss of or disruption to the supply of gas connected with it, and
  - (b) that the loss or disruption would have a serious impact on the United Kingdom or any part of it.
- (2) In this section “extra police services” means—
- (a) the services of the Ministry of Defence Police provided under an agreement with the Secretary of State for Defence under section 2(2)(e) of the Ministry of Defence Police Act 1987 (c. 4), or
  - (b) special police services provided under section 25(1) of the Police Act 1996 (c. 16) at the Secretary of State’s request.



- (3) The Secretary of State may require a designated gas transporter who has an interest in the gas facility to pay all or part of the costs incurred by the Secretary of State in respect of the provision of extra police services in or around the facility.
- (4) In this section “gas facility” means a facility used for the purposes of, or for purposes connected with, the transportation of gas from a gas shipper to a gas transporter or gas supplier.
- (5) The reference in subsection (3) to a designated gas transporter having an interest in a gas facility includes the facility being used for, or for purposes connected with, the supply of gas to the transporter.

## **86 Costs of policing at gas facilities: Scotland**

- (1) This section applies where the Secretary of State considers—
  - (a) that the provision of extra police services at a gas facility in Scotland is necessary because of a risk of loss of or disruption to the supply of gas connected with it, and
  - (b) that the loss or disruption would have a serious impact on the United Kingdom or any part of it.
- (2) In this section “extra police services” means—
  - (a) the services of the Ministry of Defence Police provided under an agreement with the Secretary of State for Defence under section 2(2)(e) of the Ministry of Defence Police Act 1987 (c. 4), or
  - (b) police services provided under an agreement under section 13 of the Police (Scotland) Act 1967 (c. 77) for the guarding, patrolling and watching of the gas facility entered into at the request of the Secretary of State by—
    - (i) the occupier of, or of part of, the facility, and
    - (ii) the police authority, chief constable of the police force or joint police board for the police area in which it is situated.
- (3) The Secretary of State may require a designated gas transporter who has an interest in the gas facility to pay all or part of the costs incurred by the Secretary of State in respect of the provision of extra police services within subsection (2)(a) in or around the facility.
- (4) The Secretary of State, if so requested by the occupier, must require a designated gas transporter who has an interest in the gas facility to pay the reasonable costs incurred by the occupier under any such agreement as is mentioned in subsection (2)(b).
- (5) In this section “gas facility” means a facility used for the purposes of, or for purposes connected with, the transportation of gas from a gas shipper to a gas transporter or gas supplier.
- (6) References in this section to a designated gas transporter having an interest in a gas facility include the facility being used for, or for purposes connected with, the supply of gas to the transporter.

**87 Designated gas transporters**

- (1) The Secretary of State may by order designate a person who is the holder of a licence under section 7 of the Gas Act 1986 (c. 44) (licensing of gas transporters) as a designated gas transporter for the purposes of sections 85 to 90.
- (2) The order may provide for a person to be designated only in such capacity as may be specified in the order.
- (3) An order under this section is subject to negative resolution procedure.

**88 Costs of policing at gas facilities: recovery of costs**

- (1) The Secretary of State may determine—
  - (a) the amount of the costs to be paid by a designated gas transporter under section 85 or 86,
  - (b) the manner in which and the times at which those costs are to be paid, and
  - (c) the person or persons to whom they are to be paid.
- (2) An occupier who incurs costs under an agreement under section 13 of the Police (Scotland) Act 1967 (c. 77) that are required to be paid by a designated gas transporter under section 86 may recover them directly from the designated gas transporter.
- (3) A designated gas transporter may, in determining its charges for conveying gas through pipes, take into account—
  - (a) any payments made by the designated gas transporter under section 85 or 86, and
  - (b) the reasonable costs incurred by it as party to an agreement under section 13 of the Police (Scotland) Act 1967 entered into at the Secretary of State's request.

This applies despite anything in the conditions of the designated gas transporter's licence under section 7 of the Gas Act 1986 (c. 44) that prevents the transporter from recovering such payments or costs.

- (4) The Secretary of State may direct the Gas and Electricity Markets Authority ("the Authority")—
  - (a) to treat the payments or costs as costs of a kind specified by the Secretary of State for the purposes of the determination by the designated gas transporter of the transporter's charges, or
  - (b) to allow the designated gas transporter to take into account payments made or costs incurred in or in relation to a period so specified in determining the transporter's charges for a period so specified.
- (5) The Secretary of State must consult the designated gas transporter and the Authority before giving a direction under this section.

**89 Costs of policing at gas facilities: supplementary provisions**

- (1) The Secretary of State must consult a designated gas transporter and the Authority—
  - (a) before the first time the Secretary of State requires the designated gas transporter to pay any costs under section 85 or 86,
  - (b) before the first time the Secretary of State requires the designated gas transporter to pay such costs in respect of a particular gas facility, and

- (c) where extra police services were previously provided at a particular gas facility, before the first time the Secretary of State requires the designated gas transporter to pay such costs as the result of such services being provided on a subsequent occasion.
- (2) The Secretary of State is not required—
  - (a) to take into account representations made after the end of the period of 28 days beginning with the day on which the person making the representations was consulted under subsection (1);
  - (b) to consult anyone else before requiring a designated gas transporter to pay costs under section 85 or 86.
- (3) Sections 4AA to 4A of the Gas Act 1986 (c. 44) (principal objective and general duties of the Secretary of State and the Authority) do not apply in relation to anything done or omitted by the Secretary of State or the Authority in the exercise of functions under sections 85 to 89.
- (4) Expressions used in those sections that are defined in Part 1 of the Gas Act 1986 have the same meaning as in that Part.

## **90 Application of provisions to costs incurred before commencement**

Sections 85 to 89 apply in relation to costs incurred in the period—

- (a) beginning with 16th January 2007, and
- (b) ending with the day before those sections come into force, as they apply in relation to costs incurred on or after that day.

### *Appointment of special advocates in Northern Ireland*

## **91 Appointment of special advocates in Northern Ireland**

- (1) In the following provisions for “Attorney General for Northern Ireland”, wherever occurring, substitute “Advocate General for Northern Ireland”.
- (2) The provisions are—
  - section 6(2)(c) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appointment of special advocate in proceedings before the Special Immigration Appeals Commission);
  - rule 9(1) of the Northern Ireland Act Tribunal (Procedure) Rules 1999 (S.I. 1999/2131) (appointment of special advocate in proceedings before the tribunal appointed under section 91 of the Northern Ireland Act 1998 (c. 47));
  - paragraph 7(2)(c) of Schedule 3 to the Terrorism Act 2000 (c. 11) (appointment of special advocate in proceedings before the Proscribed Organisations Appeal Commission);
  - paragraph 6(2)(c) of Schedule 6 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (appointment of special advocate in proceedings before the Pathogens Access Appeal Commission).
- (3) These amendments come into force when section 27 of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.