

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 4: Counter-terrorism powers

Section 58: Emergency power for temporary extension and review of extensions

231. **Section 58** inserts a new paragraph 38 into Schedule 8 to the 2000 Act which provides a new power for the Secretary of State to make an order that will increase the maximum period of detention under Schedule 8 to the 2000 Act, to 28 days. The power to make an order can only be used where the Secretary of State considers it necessary by reason of urgency, and can only be exercised during a period when Parliament is dissolved or in the period before the first Queen's Speech of the new Parliament, (fast track legislation would be introduced should a period of detention of more than 14 days be required at any other time, see paragraph 47 above). This limited order-making power was introduced as a response to a recommendation made in a report (published on 23 June 2011¹) by the Joint Committee convened to carry out pre-legislative scrutiny of the Draft Detention of Terrorist Suspects (Temporary Extension) Bills. Where an order is made, the maximum period of pre-charge detention under Schedule 8 is extended to 28 days. Any applications for warrants of further detention which would take the period of detention beyond 14 days must be made to a senior judge, and be made with the consent of the Director of Public Prosecutions (in England and Wales), or the Director for Public Prosecutions for Northern Ireland (in Northern Ireland) or the Lord Advocate (in Scotland). *Subsection (2)* provides that an order made under new paragraph 38 must be laid before Parliament as soon as it is reassembled following a general election and that any order will cease to have effect after 20 days if a resolution by both Houses of Parliament is not passed to approve it. By virtue of section 7(1) of the Statutory Instruments Act 1946, in calculating the 20 day period no account is to be taken of any time during which Parliament is dissolved, or prorogued, or during which both Houses are adjourned for more than four days. *Subsection (3)* introduces a requirement for the person appointed as Independent Reviewer of Terrorism Legislation under the Terrorism Act 2006 (or someone on his behalf), to conduct a review of any application for a warrant of further detention which takes the period of detention in respect of an individual or individuals, beyond 14 days.

¹ <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtdetent/161/161.pdf>