*These notes refer to the Counter-Terrorism Act 2008 (c.28) which received Royal Assent on 26 November 2008*

# COUNTER-TERRORISM ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

### Part 1 – Powers to Gather and Share Information

### Power to remove documents for examination

#### *Section 1 – Power to remove documents for examination*

15. Section 1 provides a new power for a constable to remove documents in the course of a terrorist-related search for the purpose of ascertaining whether they may be seized. Documents removed under section 1 may, subject to the time limits in section 5, be retained until the examination is complete. This power might be used, for example, to remove documents in a foreign language for translation.

16. *Subsection (1)* specifies the situations in which the new power may be used: it may only be used in the context of searches under the listed provisions of the Terrorism Act 2000 (the 2000 Act), the Anti-terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005 and the Terrorism Act 2006.

17. *Subsection (3)* makes provision in relation to documents stored in an electronic form.

18. *Subsection (4)* provides that where a document is removed under this power, a constable has the same powers of seizure (at common law and under statute) as if it had not been removed. This will include the general power of seizure under section 19 of PACE which allows a constable lawfully on premises to seize a document if the constable reasonably believes that it is evidence in relation to any offence and it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

#### *Section 2 – Offence of obstruction*

19. Section 2 creates the offence of wilfully obstructing a constable in the exercise of the power conferred by section 1. This is a summary offence, punishable by a maximum penalty of up to 51 weeks' imprisonment in England and Wales (but before section 281(5) of the Criminal Justice Act 2003 comes into force, 6 months), 12 months' imprisonment in Scotland and 6 months' imprisonment in Northern Ireland.

#### *Section 3 – Items subject to legal privilege*

20. Section 3 deals with documents that are, or may be, legally privileged. Under *subsection (1)* a constable may not remove a document if he has reasonable cause to believe that it is an item subject to legal privilege or has such an item comprised in it (for example it is a document which includes correspondence with a lawyer in it but also includes other information). If it is discovered that a document that has been removed is an item subject to legal privilege, or has such an item comprised in it, it must be returned immediately (*subsection (3)*). However, a document which has an item subject to legal privilege comprised in it may be removed or retained if it is not reasonably practicable to separate the legally privileged part from the rest of the document without

prejudicing the lawful use of the latter if it were to be seized (*subsections (2)* and *(4)*). This will be the case for example where tearing out legally privileged information from a larger document would also remove non-legally privileged information, which might comprise evidence of an offence, on the reverse of the page.

21. *Subsection (5)* provides that where parts of a document which are subject to legal privilege are removed or retained because it is not reasonably practicable to separate them from those parts which are not, the legally privileged parts must not be used in any other way but to facilitate the examination of the rest of the document.

22. *Subsection (6)* defines an "item subject to legal privilege" for the purpose of this section by reference to PACE for England and Wales, the Proceeds of Crime Act 2002 for Scotland and PACE NI for Northern Ireland.

### *Section 4 – Record of removal*

23. *Subsections (1)* and *(2)* provide that a constable who removes a document using the new power of removal must make a written record of the removal as soon as is reasonably practicable and in any event within 24 hours of the removal.

24. *Subsections (3), (4)* and *(5)* set out the matters to be included in such record and *subsection (10)* makes specific provision as to how the reference to the address of the premises in *subsection (3)* is to be interpreted where the search is of a vehicle. Many of the listed search powers include searches of vehicles (for example, searches under Schedule 5 to the 2000 Act may be of "any premises", and "premises" is defined in section 121 of that Act to include vehicles).

25. *Subsections (7)* and *(8)* provide that a constable must, within a reasonable time of receiving a request, supply a copy of the search record to a person with an interest in the document as defined.

26. *Subsection (9)* provides that if a document has been found during the course of a search under a warrant in England and Wales or Northern Ireland, the constable must endorse the warrant stating that the document was removed under the provisions of section 1 of this Act. This is so that the person or court which issued the warrant will be aware of the action that has been taken under it when the warrant is returned to them.

### *Section 5 – Retention of documents*

27. Section 5 provides that documents removed under section 1 cannot be retained for more than 48 hours unless further retention – up to a maximum of 96 hours from the time of removal – - is authorised by a constable of at least the rank of chief inspector. Such authorisation may only be given if that officer is satisfied of the matters contained in *subsection (2).*

### *Section 6 – Access to documents*

28. Section 6 allows a person referred to in *subsection (3),* on request, to have supervised access to a document retained under the provisions of section 5 or to be given a copy of such a document (*subsection (2)).* This is subject however to the officer in charge of the investigation (defined in *subsection (5)*) being able to refuse such access or a copy on the grounds set out in *subsection (4).* The examination of a document under this power might not be part of an investigation into an offence (for example where the document was removed during the search of a terrorist suspect prior to arrest). This explains why the grounds in section 6(4)(a) are required. *Subsection (4)(b)* covers the investigation of an offence - for example the police may believe that providing access to or a copy of the document would tip off a person as to the documentation seized such that other evidence of the offence could be covered up. S*ubsection (4)(c)* covers the prejudice of criminal proceedings. The ground in *subsection (4)(d)* is to cover for

example a document which the officer has reasonable grounds to believe constitutes information useful to terrorists.

### *Section 7 – Photographing and copying of documents*

29. Section 7 provides that a document removed under section 1 may not be photographed or copied except for the purposes of section 6 or to produce information stored in electronic form in a visible and legible form.

30. On return of the document, electronic copies must be destroyed and any hard copies made under *subsection (1)* must be returned at the same time (*subsection (2)*).

31. *Subsections (3)* and *(4)* provide that the persons referred to in *subsection (3)* can request a certificate to show that all copies have been so destroyed, made inaccessible or returned and such a certificate must be issued within three months of the request. The certificate is to be issued by the "relevant chief officer of police" as defined in *subsection (5)*.

### *Section 8 – Return of documents*

32. This section provides that a document that is to be returned (because the time limit for retention has expired or the document is not one that may be seized), and any copy, is to be returned to the person searched or the occupier of the premises on which it was found. However, where another person appears to have a better right to the document, the document must be returned instead to that person, and where different persons claim to be entitled to the document, it may be retained for as long as reasonably necessary to determine who has best claim to it.

### *Section 9 – Power to remove documents: supplementary provisions*

33. *Subsection (2)* means that when a search is carried out under section 52(1) of the Anti-Terrorism, Crime and Security Act 2001, references in these provisions to a constable should be read as references to an authorised officer as defined in that section – as that search power is conferred on an authorised officer rather than a constable.

## Power to take fingerprints and samples from person subject to control order

### *Section 10 – Power to take fingerprints and samples: England and Wales*

34. Section 10 amends sections 61, 63, 63A, 64 and 65 of PACE, providing a constable with powers relating to the taking and use of fingerprints and non-intimate samples from an individual subject to a control order. (The control order regime is contained in the Prevention of Terrorism Act 2005.) Both "fingerprints" and "non-intimate samples" have the same meaning as that given in section 65 of PACE. That is, "fingerprints" include palm prints and "non-intimate samples" means a sample of hair other than pubic hair; a sample taken from a nail or from under a nail; a swab taken from any part of a person's body including the mouth but not any other body orifice; saliva and a footprint or a similar impression of any part of a person's body other than a part of his hand. These amendments will apply to all individuals subject to control orders that are in force from the time this section is commenced, regardless of when the control order was made, but the provisions will not apply to individuals whose control orders have already lapsed (see *subsection (5)* and section 13).

35. *Subsections (1)* and *(2)* provide a constable with the power to take fingerprints and non-intimate samples respectively without the appropriate consent of an individual subject to a control order. Appropriate consent is defined in section 65 of PACE as meaning: (a) in relation to a person who has attained the age of 17 years, the consent of that person; (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian. PACE Code

D (Code of Practice for the Identification of Persons by Police Officers) provides that a constable can use reasonable force to ensure compliance with this provision where the appropriate consent is withheld.

36. *Subsection (3)(a)* provides a constable with the power to check the fingerprints and non-intimate samples of an individual subject to a control order against the same databases that other fingerprints etc. taken under PACE may be checked against (see PACE section 63A, as amended by section 14). So the fingerprints or samples may be checked against other such fingerprints or samples and/or information derived from other samples that are held by or on behalf of any relevant law enforcement authority or are held in connection with or as a result of an investigation of an offence or which are held by or on behalf of the Security Service or the Secret Intelligence Service. Relevant law enforcement authorities are defined in section 63A(1A) of PACE to include a police force and the Serious Organised Crime Agency. The definition also includes persons outside the territory of the United Kingdom whose functions correspond to those of a police force and any other public authority with functions in any part of the British Islands which consist of or include the investigation of crimes or the charging of offenders.

37. *Subsection (3)(b)* provides a constable with powers to require a controlled individual to attend a police station for the purposes of having their fingerprints and/or non-intimate samples taken. In the event that such a request is not complied with, the person may be arrested without a warrant (see the amendment to section 63A(7) made by *subsection (6)*).

38. *Subsection (4)* allows the retention of a controlled individual's fingerprints and non-intimate samples taken under the new provisions, subject to the safeguards in section 64 of PACE (as amended by section 14). These safeguards ensure that any such samples retained are only used for purposes related to the interests of national security, the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or the identification of a deceased person or of the person from whom the material came.

39. *Subsection (6)* makes consequential amendments of PACE, many of which mean that fingerprints and non-intimate samples taken from a controlled person will be subject to the same provisions as fingerprints and non-intimate samples taken under current PACE powers. These include safeguards such as requiring a constable to inform the individual concerned of the reason for taking the fingerprints or non-intimate sample without consent (this will normally be simply that they are subject to a control order) before they are taken and informing them that the fingerprints and/or samples may be the subject of a "speculative search". The matters of information must also be recorded as soon as it is practicable to do so. The term "speculative search" is defined at section 65 of PACE and it is taken to mean that the fingerprints and/or non-intimate samples can be randomly checked against other samples that have been taken under current PACE powers as mentioned in relation to *subsection (3)*.

### *Section 11 – Power to take fingerprints and samples: Scotland*

40. Section 11 makes similar provision to section 10 for Scotland in relation to the taking of fingerprints and non-intimate samples from an individual subject to a control order. The section creates new free-standing powers rather than amending any existing legislation. The main area of difference between the powers in England and Wales and the powers in Scotland is that any samples that are obtained may be used only for the purposes of a terrorist investigation or in the interests of national security. This difference is necessary in order to avoid making provision in areas that are within devolved competence. In addition, in line with current procedures in Scotland, constables would need authorisation from an officer of the rank of inspector or above to take certain types of non-intimate samples (non-pubic hair or nail samples and external body fluid samples) from controlled individuals. (A constable does not require such authorisation

to take fingerprints, palm prints, other external body prints and saliva samples.) In contrast, current procedures in England, Wales and Northern Ireland allow constables to take fingerprints and all non-intimate samples when individuals are arrested under PACE or PACE NI without such authorisation. The difference arises because the provisions in sections 10, 11 and 12 are intended to be in line with existing procedures in each country.

### *Section 12 – Power to take fingerprints and samples: Northern Ireland*

41. Section 12 makes corresponding provision to section 10 for Northern Ireland in relation to the taking of fingerprints and non-intimate samples from an individual subject to a control order. It amends PACE NI.

### *Section 13 – Power to take fingerprints and non-intimate samples: transitional provision*

42. Section 13 makes transitional provision for the powers in sections 10, 11 and 12 and provides that the powers to take fingerprints and non-intimate samples from a person subject to a control order will have effect at the time the sections are commenced regardless of when the control order was made.

## Retention and use of fingerprints and samples

### *Sections 14 to 18 – Retention and use of fingerprints and samples*

43. Sections 14 to18 (retention and use of fingerprints and samples) seek to ensure that fingerprints, DNA and footwear impressions ("samples") can be effectively used for counter-terrorist purposes including by the security services by:

a) allowing the cross checking of security services material with ordinary crime (PACE) samples in England, Wales and Northern Ireland. (Scotland does not have PACE);

b) putting the retention and use of material not subject to existing restriction (mostly covertly acquired fingerprints and samples) on a statutory footing; and

c) standardising the purposes for which fingerprints and samples can be used as between the Terrorism Act 2000, PACE and material not subject to existing statutory restrictions (section 18 of this Act).

44. These sections amend the purposes for which samples obtained during criminal or terrorist investigations can be used. This includes adding that such samples can be used for the purposes of national security. National security is defined in section 1(2) of the Security Services Act 1989 and includes "*threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.*"

45. Section 64(1A) of PACE currently allows samples to be retained and used for the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or for the identification of dead people (the same uses are provided for in PACE NI). In contrast, paragraph 14 of Schedule 8 to the 2000 Act provides that samples taken under the provisions of that Act can only be used for terrorist investigations or for the purposes related to the prevention or detection of crime, the investigation of an offence of the conduct of prosecution.

46. These sections will standardise the purposes for which the samples can be used between the 2000 Act, PACE and PACE Northern Ireland. When the uses for the samples are different they cannot be stored on inter-connected databases.

### *Section 14 – Material subject to the Police and Criminal Evidence Act 1984*

47. *Subsection (2)* amends section 63A(1) of PACE to allow samples (fingerprints, impressions of footwear or DNA samples) taken under PACE to be checked against other samples held by or on behalf of the Security Service (MI5) or the Secret Intelligence Service (MI6 or SIS). The section adds a similar power to check information derived from other samples against that information derived from material held by the Security Services or the Secret Intelligence Service. Samples may be taken from a person under PACE if the person is suspected of being involved with a recordable offence, has been charged with a recordable offence or informed that he will be reported for such an offence, or, following the amendments made by section 10, if he is subject to a control order.

48. *Subsection (3)* amends section 63A(1ZA) of PACE similarly to allow the cross checking against material held by the Security Service or the Secret Intelligence Service of material taken from a person under section 61(6A), which allows a constable to take a person's fingerprints etc. if the person's name cannot be ascertained or if the constable believes the person has given a false name.

49. *Subsection (5)* inserts a new *subsection (1AB)* into section 64 of PACE that sets out the purposes for which samples can be used. The section expands the uses to permit samples to be used in the interest of national security as well as for the purposes already listed in section 64, which are purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or for purposes relating to the identification of a deceased person or the person from whom the material came.

### *Section 15 – Material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989*

50. Section 15 amends PACE NI to make changes for Northern Ireland that have the same effect to those made above to PACE for England and Wales. These will permit samples and fingerprints to be checked against records held by or on behalf of the Security Service or the Secret Intelligence Service and for the use of such samples to be expanded to include when it is in the interests of national security.

### *Section 16 – Material subject to the Terrorism Act 2000: England, Wales and Northern Ireland*

51. Section 16 amends paragraph 14 of Schedule 8 to the 2000 Act. Schedule 8 to the 2000 Act governs the treatment of persons detained under that Act. Paragraph 14 applies to fingerprints and samples taken under Schedule 8. Paragraph 14 is amended so that the fingerprints or samples taken under Schedule 8 may be used in the interests of national security and in the identification of a deceased person or of the person from whom the material came, in addition to the uses already allowed for in paragraph 14 (in a terrorist investigation or in the prevention and detection of crime, the investigation of an offence or the conduct of a prosecution). This ensures that the purposes cover all those for which fingerprints and samples taken under PACE and PACE NI may be used following the amendments made by sections 14 and 15. It also provides that samples taken under the 2000 Act in England, Wales and Northern Ireland may be cross checked against material held under section 18. Paragraph 14 already allows cross checking against material referred to in section 63A PACE (and PACE NI). Therefore the amendments to section 63A PACE (and PACE NI) made by this Act will enable the fingerprints and samples taken under Schedule 8 to be cross-checked against any samples held by or on behalf of the Security Service or the Secret Intelligence Service

### *Section 17 – Material subject to the Terrorism Act 2000: Scotland*

52. Section 17 makes amendments to paragraph 20 of Schedule 8 to the 2000 Act (which applies in Scotland) the effect of which are similar to the amendments made by section 16 (which amends provisions applying in England and Wales). Paragraph 20

governs the use of fingerprints and samples of those detained under the 2000 Act in Scotland. *Subsection (2)* amends paragraph 20 so as to allow samples obtained in Scotland under the 2000 Act to be used for purposes of a terrorist investigation, in the interest of national security, for the purposes related to the prevention and detection of crime or the investigation of an offence or the conduct of a prosecution.

53. *Subsection (3)* adds a new paragraph 21 to Schedule 8 that applies, with modifications, section 20 of the Criminal Procedure (Scotland) Act 1995. The effect is that the 2000 Act samples may be cross checked against samples taken under the 1995 Act, samples referred to in section 63A of PACE and against material held under section 18.

### *Section 18 – Material not subject to existing statutory restrictions*

54. Section 18 provides a statutory framework for the use and retention of DNA samples and fingerprints that are not held subject to other existing statutory restrictions.

55. *Subsection (2)* restricts the uses to which such samples and fingerprints held by a law enforcement authority in England, Wales or Northern Ireland may be put. They may only be used in the interest of national security, for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution or for the purposes related to the identification of a deceased person or of the person from whom the material came.

56. *Subsection (3)* imposes a condition that must be met before the samples and fingerprints may be used for the purposes set out in *subsection (2).* The condition is that the material must have been either: (i) obtained by the authority pursuant to an authorisation under the Police Act 1997 or the Regulation of Investigatory Powers Act 2000; (ii) supplied to the authority by another law enforcement body (domestic or foreign); or (iii) otherwise lawfully obtained by the authority for one of the purposes in *subsection (2).*

57. *Subsection (4)* clarifies certain terms used in *subsection (2):* use of material includes allowing a check to be made against it and disclosing to another person. This phrase is used principally to allow samples to be exchanged with the security agencies who are not included in the definition of "law enforcement authority" and "police force" in section 18(5). The reference in *subsection (2)* to crime includes actions which constitute a criminal offence under law of any part of the UK or a territory outside the UK or actions which would have been a criminal offence had they been conducted in the UK; and the references to investigations and prosecutions are also given a wide meaning, so as to apply equally to investigations and prosecutions which are conducted outside the UK.

58. *Subsection (5)* defines terms used in this section.

59. *Subsection (6)* sets out "the existing statutory restrictions" which are referred to in *subsection (1).*

## Disclosure of information and the intelligence services

### *Sections 19 to 21 – Disclosure of information and the intelligence services*

60. Section 19 provides that any person may give information to any of the intelligence services (defined in section 21 as the Security Service, the Secret Intelligence Service, and the Government Communications Headquarters) for the purpose of any of the functions of that service. The provisions that specify the functions of each of the intelligence services are listed in section 21(2). The person giving the information may do so regardless of any duty to keep the information confidential or of any other restriction on disclosure (*subsection (6)*). This is subject the Data Protection Act 1998 and Part 1 of the Regulation of Investigatory Powers Act 2000 (see section 20(2)).

61. *Subsection (2)* provides that information obtained by an intelligence service in connection with one of its functions may be used by it in connection with any of its

other functions. *Subsections (3) to (5)* govern the disclosure of information obtained by the intelligence services for the purposes of any of its functions. Such information may be disclosed by the service for the purpose of the proper performance of any of its functions or for other the purposes specified in those subsections (which include for each organisation the purpose of any criminal proceedings). Again, such a disclosure will not breach any obligation of confidentiality or other restriction (*subsection (6)*), subject to compliance with the Data Protection Act and Part 1 of the Regulation of Investigatory Powers Act 2000 (section 20(2)).

62. Section 20 makes it clear that the information sharing provisions in section 19 do not affect the duties on the heads of the intelligence services (listed in *subsection (1)*) to ensure that arrangements are in place for securing that their service obtains and discloses information only in accordance with the purposes specified in the provisions listed in that subsection (which mirror the purposes listed in section 19(3) to (5)).

### *Schedule 1 – Disclosure and the Intelligence Services: Consequential Amendments*

63. *Paragraphs 1*, *4* and5 omit section 19(2)(a) of the Anti-terrorism, Crime and Security Act 2001, section 38 of the Immigration, Asylum and Nationality Act 2006 and section 67 and subsection 39(4(g) of the Statistics and Registration Service Act 2007 as there will be no need for the specific information-sharing gateways in these provisions once the new information-sharing gateway in section 19 is brought into force.

64. *Paragraphs 2* and*3* make amendments to secondary legislation concerning the electoral register, removing restrictions in that legislation on onward disclosure by the intelligence and security agencies (as such disclosure will now be governed by section 19 of the Act), but preserving all rights conferred on the intelligence and security agencies to obtain information from the electoral register under the regulations.

## Part 2 –Post-Charge Questioning of Terrorist Suspects

### *Section 22 – Post-charge questioning: England and Wales*

65. *Subsection (2)* allows a judge of the Crown Court to authorise questioning of a person in England and Wales about an offence, for which they have been charged or after they have been officially informed that they may be prosecuted, where the offence was a terrorism offence (as defined in section 27) or where the judge considers the offence to have a terrorist connection (as defined in section 93).

66. *Subsection (3)* provides that the judge authorising post-charge questioning must specify the period during which questioning is authorised and may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.

67. *Subsection (4)* specifies that the time period for which questioning is authorised begins when questioning commences and runs continuously from that time irrespective of whether or not questioning stops. *Subsection (4)(b)* limits the period for which a judge can authorise questioning to a maximum of 48 hours before further authorisation must be sought.

68. *Subsection (5)* allows the judge to authorise the removal of a suspect to another place for the purposes of questioning. For example, this would allow a judge to authorise a suspect's removal from a prison to a police station for questioning.

69. *Subsection (6)* provides that a judge can authorise post-charge questioning under this section only if satisfied that further questioning of the person is necessary in the interests of justice, that the police investigation related to the suspect is being conducted diligently and expeditiously, and that it would not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge. Undue

interference might arise for example if authorisation for questioning is sought too near to the time of the trial.

70. *Subsections (7)* and *(8)* provide that codes of practice under section 66 of PACE must make provision about post-charge questioning.

71. *Subsection (9)* extends the application of section 34(1) of the Criminal Justice and Public Order Act 1994, which allows adverse inferences to be drawn from an accused person's failure to mention facts when questioned, to cover post-charge questioning under this section.

### *Section 23 – Post-charge questioning: Scotland*

72. *Subsection (2)* allows a sheriff to authorise questioning of a person in Scotland about an offence, for which they have been charged or when they have appeared on petition in respect of the offence, where the offence is a terrorism offence (as defined in section 27) or where it appears to the sheriff that the offence has a terrorist connection (as defined in section 93).

73. *Subsection (3)* provides that the sheriff authorising post-charge questioning must specify the period during which questioning is authorised and may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.

74. *Subsection (4)* specifies that the time period for which questioning is authorised begins when questioning commences and runs continuously from that time irrespective of whether or not questioning stops. *Subsection (4)(b)* limits the period for which a judge can authorise questioning to a maximum of 48 hours before further authorisation must be sought.

75. *Subsection (5)* allows the sheriff to authorise the removal of a suspect to another place for the purposes of questioning. For example, this would allow a judge to authorise a suspect's removal from a prison to a police station for questioning.

***Subsection** (6)* provides that a sheriff can authorise post-charge questioning under this section only if satisfied that further questioning of the person is necessary in the interests of justice, that the police investigation related to the suspect is being conducted diligently and expeditiously, and that it would not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge.

### *Section 24 – Post-charge questioning: Northern Ireland*

76. *Subsection (2)* allows a district judge (magistrate's court) to authorise questioning of a person in Northern Ireland about an offence, for which they have been charged or after they have been officially informed that they may be prosecuted, by a constable where the offence is a terrorism offence (as defined in section 27) or where it appears to the judge that the offence has a terrorist connection (as defined in section 93).

77. *Subsections (3), (4), (5),* and *(6)* set out the same requirements for the authorisation of post-charge questioning in Northern Ireland as for England and Wales under *subsections (3), (4), (5),* and *(6)* of section 22.

78. *Subsections (7)* and *(8)* provide that codes of practice under Article 65 of PACE NI must make provision about post-charge questioning.

79. *Subsections (9)* and *(10)* amend the Criminal Evidence (Northern Ireland) Order 1988 (S.I. 1988/1987 (N.I. 20)) to allow adverse inferences to be drawn from an accused person's failure to mention facts when questioned, to cover post-charge questioning under this section.

### *Section 25 – Recording of interviews*

80. Section 25 requires post-charge questioning under sections 22 - 24 to be video-recorded with sound (*subsection (2)*).

81. Codes of practice must be issued for the video-recording of interviews which must be observed in post-charge questioning under sections 22 - 24 *(subsections (3) & (4).* Any codes made under this section can make different provision for different parts of the UK *(subsection (5)).*

### *Section 26 – Issue and revision of code of practice*

82. Section 26 sets out the process for the issue and revision of a code of practice for the video-recording of post-charge questioning under section 25. The code of practice must first be published in draft and is brought into operation by an order; this order is subject to the affirmative resolution procedure.

### *Section 27 – Post-charge questioning: meaning of "terrorism offence"*

83. Section 27 sets out the terrorism offences to which sections 22 to 24 apply: the list of terrorism offences in *subsection (1)* includes offences under the Terrorism Act 2000 and the Terrorism Act 2006. These provisions will also apply to the ancillary offences associated with the offences listed (*subsection (2)*). *Subsections (3)* and *(4)* allow the Secretary of State to amend this list of offences by order; this is subject to the affirmative resolution procedure.

## Part 3 – Prosecution and Punishment of Terrorist Offences

### Jurisdiction

### *Section 28 – Jurisdiction to try offences committed in the UK*

84. Section 28 provides for UK-wide jurisdiction for specified terrorism offences, regardless of where in the UK the offence took place. The purpose of this section is to remove the need to have separate trials for connected terrorist offences which occur in different jurisdictions within the UK. The common law currently provides that a significant part of an offence must take place within the part of the UK in which the court trying the offence is located. *Subsection (2)* sets out the offences to which this provision is to apply. These are the offence under section 113 of the Anti-Terrorism, Crime and Security Act 2001 and all offences under the 2000 and 2006 Terrorism Acts (other than those with an extra-territorial element and those that do not have UK-wide extent). This provision will also apply to the ancillary offences associated with the offences listed in *subsection (2)* by virtue of the general law which provides that jurisdiction for an ancillary offence follows that for the substantive offence.

85. *Subsections (3)* and *(4)* allow the Secretary of State to amend the list of terrorism offences in *subsection (2)* by order (subject to the affirmative resolution procedure), and *subsection (5)* provides that an offence may only be added in this way if it appears to the Secretary of State necessary to do so for the purpose of dealing with terrorism. This means that where an offence under the general criminal law is added to this section by order, the jurisdiction provided by the section will only apply where such an offence is being used in a terrorism case. At report stage in the House of Commons the then Minister of State for policing, crime and security in the Home Office, Mr Tony McNulty, said that this section and any offences added under the order-making power will apply only in relation to offences committed on or after the coming into force of the relevant provision (Hansard, 10 June 2008: Column 226 – 227).

86. *Subsection (6)* inserts a new *subsection (6A)* into section 1 of the Justice and Security (Northern Ireland) Act 2007. Section 1 of that Act allows for a non-jury trial in Northern Ireland where certain conditions are met. This new subsection precludes the Director

of Public Prosecutions for Northern Ireland from issuing a certificate for a non-jury trial where the proceedings are only taking place in Northern Ireland as a result of the jurisdiction provided by section 28 and the only condition which would enable a non-jury trial to take place is the fourth condition of section 1 of the 2007 Act. This means a prosecution in Northern Ireland arising from the jurisdiction provided by section 28 could only be by way of a non-jury trial where the offence had a connection to a proscribed terrorist organisation whose activities are connected with the affairs of Northern Ireland (in the ways set out in conditions 1 to 3 in section 1 of the 2007 Act) and the Director of Public Prosecutions for Northern Ireland was satisfied that in view of this there was a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.

## Consent to prosecution

### *Section 29 – Consent to prosecution of offence committed outside UK*

87. This section amends section 117(2A) of the Terrorism Act 2000 (the 2000 Act) and section 19(2) of the Terrorism Act 2006 so that the consent of the Attorney General or the Advocate General for Northern Ireland (or prior to the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002, the Attorney General for Northern Ireland) is required before the Director of Public Prosecutions or Director of Public Prosecutions for Northern Ireland may consent to the prosecution of the offences to which those provisions apply, if it appears to the latter that the offence was committed outside the UK. The offences which require such consent are any offence under the 2000 Act other than those listed in section 117(1) of the 2000 Act or any offence under Part 1 of the 2006 Act. This amendment is based on recommendation 15 of Lord Carlile's January 2007 report on the definition of terrorism.

## Sentencing

### *Section 30 – Sentences for offences with a terrorist connection: England and Wales*

88. Section 30 is included in response to recommendation 8 of Lord Carlile's January 2007 report on the definition of terrorism, that a terrorist connection should be considered to be an aggravating factor in sentencing. This is important where persons are convicted of offences other than those under the terrorism legislation but where the offence is connected with terrorism (for example an explosives-related offence).

89. Under *subsections (1)* to *(3)* a court in England and Wales considering a person's sentence for an offence listed in Schedule 2 must, if it appears that there was or may have been a terrorist connection, make a determination (on the criminal standard of proof) as to whether there was such a connection. The court will make this determination on the basis of the usual information before it for the purposes of sentencing, that is the trial evidence or evidence heard at a *Newton* hearing (if necessary) following a guilty plea, and taking account of any representations by the prosecution or defence. A *Newton* hearing is where the judge hears evidence from both the prosecution and defence and comes to his or her own conclusion on the facts, applying the criminal standard of proof. If the court determines that there was a terrorist connection, it must treat that as an aggravating factor when sentencing the offender (*subsection (4)*). The meaning of an offence having a "terrorist connection" is defined in section 93 as being where the offence is or takes place in the course of an act of terrorism or is committed for the purposes of terrorism. *Subsection (6)* provides that this statutory aggravating factor in sentencing will apply only in relation to offences committed on or after commencement.

### *Section 31 – Sentences for offences with a terrorist connection: Scotland*

90. Section 31 provides that in Scotland the sentencing court must treat a terrorist connection (as defined in section 93), proved to the trial court, as an aggravating factor when sentencing for an offence specified in Schedule 2 to the Act (offences where

terrorist connection to be considered). *Subsection (3)* requires a court imposing an aggravated sentence for an offence with a terrorist connection to state the extent and reasons for the difference between the sentence it imposed and that it would have imposed if the offence had not had a terrorist connection. *Subsection (4)* provides that evidence from a single source is sufficient to prove this aggravating factor – which is different from the usual position under the law in Scotland where corroboration is required. *Subsection (5)* provides that this new aggravating factor will only apply in relation to offences committed on or after commencement.

### *Section 32 – Sentences for offences with a terrorist connection: armed forces*

134. This section makes corresponding provision to that in section 30 for service courts 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. Corresponding civil offence is defined in section 95(4).

### *Section 33 – Power to amend list of offences where terrorist connection to be considered*

91. This section provides the Secretary of State with a power to amend (by order subject to the affirmative resolution procedure) the list of offences in Schedule 2 in relation to which the court must consider whether there is a terrorist connection.

### *Schedule 2 – Offences where terrorist connection to be considered*

92. Schedule 2 sets out the list of offences under the general criminal law (as opposed to the terrorism legislation) in relation to which the court must consider whether there is a terrorist connection for the purposes of aggravated sentencing (sections 30 to 33). These are the offences most frequently used to prosecute terrorist cases or which are most likely to be used to prosecute such cases. The list of offences in Schedule 2 and determination of terrorist connection are also relevant to the forfeiture provisions in the Act (see section 35 which inserts new section 23A(4) into the 2000 Act) and the notification requirements of Part 4 of the Act (see section 42).

## Forfeiture

### *Section 34 – Forfeiture: terrorist property offences*

93. Section 34 replaces section 23 of the 2000 Act (forfeiture: terrorist property offences), which deals with the power of a court to order the forfeiture of money or other property from a person convicted of offences under sections 15 to 18 of that Act ("terrorist finance" offences). The principal change made to section 23 is that the court may make a forfeiture order in respect of money or other property which had been used for the purposes of terrorism. So, for example, the court could order the forfeiture of a flat which was used for making bombs.

### *Section 35 – Forfeiture: other terrorism offences and offences with a terrorist connection*

94. Section 35 inserts a new section 23A into the 2000 Act. This allows the court which convicts a person of certain offences to order the forfeiture of money or other property in the possession or under the control of the convicted person at the time of the offence and which either had been used for the purposes of terrorism or was intended by that person to be used for those purposes, or which the court believes will be used for the purposes of terrorism unless forfeited. The offences in respect of which this power of forfeiture is available are certain offences under the 2000 Act and the Terrorism Act 2006 (but not the terrorist finance offences, which are covered by new section 23), and, in England and Wales and in Scotland (but not in Northern Ireland) offences falling

within Schedule 2 which the court determines have a terrorist connection (as defined in section 93) under section 30 or 31.

95. Section 23A(5) allows the Secretary of State to amend the list of offences to which the provision applies by order, subject to affirmative resolution (see *subsection (2)* of section 35 which amends section 123 of the 2000 Act which specifies the instruments made under that Act which are subject to the affirmative resolution procedure).

### *Section 36– Forfeiture: supplementary provisions*

96. Section 36 inserts a new section 23B into the 2000 Act which contains supplementary provisions in relation to the court's power to make a forfeiture order under section 23 or 23A.

97. Section 23B(1) allows a person other than the convicted person who claims to have an interest in anything which can be forfeited to be given an opportunity to be heard by the court before it makes an order.

98. Section 23B(2) requires the court, before making an order, to have regard to the value of the property and the likely effect (financial or otherwise) a forfeiture order will have on the convicted person.

99. Section 23B(3) makes provisions for procedures in Scotland.

100. Section 23B(4) gives effect to Schedule 4 to the 2000 Act which makes further provision in relation to forfeiture orders made under sections 23 and 23A. Schedule 4 is consequentially amended by Schedule 3 to this Act.

### *Section 37 – Forfeiture: application of proceeds to compensate victims*

101. *Subsection (1)* of section 37 inserts a new paragraph 4A into Part 1 of Schedule 4 to the 2000 Act. Paragraph 4A(1) allows a court making a forfeiture order in a case where the offender has been convicted of an offence which has resulted in another person suffering personal injury, loss or damage, or where any such offence is taken into consideration, to order that an amount is to be paid to that person out of the proceeds of the forfeiture. The court may specify a sum which the amount to be paid may not exceed.

102. Paragraph 4A(2) defines for this purpose the proceeds of forfeiture as being the aggregate amount of any forfeited money plus the proceeds of any sale or disposal of forfeited property, after deduction of the costs of the sale or disposal. This sum will then be reduced by the amount of any payment made under paragraph 2(1)(d) (to a person with an interest in the property) or 3(1) (to a receiver appointed to implement the forfeiture order) of Schedule 4 to the 2000 Act.

103. Paragraph 4A(3) provides that a court may only make an order under this paragraph if it is satisfied that it would have made an order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (which is the general power under which a court may make a compensation order on conviction) requiring the offender to pay compensation, if it had not been for the inadequacy of the offender's means.

104. *Subsection (2)* inserts new paragraph 17A into Part 2 of Schedule 4 to the 2000 Act, making similar provision in Scotland; and *subsection (3)* inserts new paragraph 32A into Part 3 of Schedule 4, making similar provision for Northern Ireland.

### *Section 38 – Forfeiture: other amendments*

105. *Subsection (1)* of section 38 substitutes a new section 120A into the 2000 Act.

106. New section 120A(1) sets out some specific items, connected to the offence, which may be forfeited in relation to specific offences in the 2000 Act. For sections 54 and 58, there is no change as to what may already be forfeited under the 2000 Act.

107. New section 120A(2) provides that the court must give an opportunity to be heard to any person other than the convicted person who claims to have an interest in anything which can be forfeited under this section. (This replicates provision to this effect which is currently in sections 54 and 58 of the 2000 Act.)

108. New section 120A(3) provides that a forfeiture order does not come into effect until all possibilities of it being varied or set aside on appeal have been exhausted. (Provision to this effect is currently in sections 54 and 58.)

109. New section 120A(4) allows the court to make any provision necessary to give effect to the forfeiture, including provisions relating to the retention, handling, disposal or destruction of what is forfeited. Destruction might be ordered for example in relation to articles seized whose continued existence are considered dangerous.

110. *Subsection (3)* of section 38 inserts a new section 11A into the Terrorism Act 2006. New section 11A(1) allows for the forfeiture on conviction for an offence under sections 9 or 10 of the Terrorism Act 2006 of any radioactive device or material, or any nuclear facility made or used in the commission of the offence. New section 11A(2) provides similar powers in relation to an offence committed under section 11 of the Terrorism Act 2006, allowing the forfeiture of certain nuclear materials which were the subject of demands or threats falling within subsections (1) and (3) of that section. There are similar supplementary provisions to those in the new section 120A.

### *Section 39 – Forfeiture: consequential amendments*

111. Section 39 gives effect to Schedule 3 which makes amendments consequential upon the new provisions concerning forfeiture orders in section 34 - 39.

### *Schedule 3 – Forfeiture: consequential amendments*

112. Schedule 3 contains amendments consequential on those made by sections 34 to 38. These are mainly to amend Schedule 4 to the 2000 Act, to take account of the extended forfeiture regime. Schedule 4 to the 2000 Act makes supplementary provision concerning forfeiture orders under section 23 of the 2000 Act, for example in relation to restraint orders and how forfeiture orders may be enforced.

## Part 4 – Notification Requirements

### *Section 40 – Scheme of this Part*

113. This is an introductory section relating to the new notification scheme for convicted terrorists (aged 16 or over on the date of their being dealt with), given a relevant sentence (broadly, at least 12 months' imprisonment), and the related orders.

### Offences to which this Part applies: terrorism offences

### *Section 41 – Offences to which this Part applies: terrorism offences*

114. This section specifies a number of terrorism offences, and their associated ancillary offences, to which this Part of the Act applies. It also provides the Secretary of State with an order-making power to amend this list of offences, subject to the affirmative resolution procedure and to transitional provisions.

### *Section 42 – Offences to which this Part applies: offences having a terrorist connection*

115. This Part of the Act also applies to offences under the general law set out in Schedule 2 which have a terrorist connection (as defined in section 93).

116. *Subsection (1)* provides that the notification provisions apply when a court in England and Wales or in Scotland has determined that an offence has a terrorist

connection in accordance with section 30 or 31 (sentences for offences with a terrorist connection). Since the Act does not contain corresponding provision for Northern Ireland on aggravated sentencing for offences with a terrorist connection, the notification provisions will apply in Northern Ireland only to terrorism offences falling within section 41.

117. *Subsection (2)* provides a right of appeal against a determination by a court in England and Wales that the offence has a terrorist connection. Such an appeal may also be made by way of the usual right of appeal against sentence, but this provision is to enable a person to appeal against the determination alone.

118. *Subsection (3)* provides that if such an appeal is successful, the notification requirements are treated as never having applied. This means that any breach of the requirements before the successful appeal would not be prosecuted.

119. *Subsection (4)* provides that where an offence is removed from the list of offences in Schedule 2 by way of order, the notification requirements will cease to apply to a person subject to them by virtue only of a conviction for that offence, with effect from the date the order comes into force.

### *Section 43 – Offences dealt with before commencement*

120. Section 43 provides for the application of the notification requirements to persons convicted of a triggering terrorism offence prior to the commencement of Part 4 (provided the person was aged 16 or over on the date they were dealt with and was given a relevant sentence - broadly, 12 months' or more imprisonment.) The requirements will only apply to such a person if immediately before commencement the person is imprisoned or detained for the triggering offence (or would have been but for being unlawfully at large or otherwise temporarily out of custody) or is on licence in respect of that offence. This retrospective application does not apply to offences with a terrorist connection as there will have been no determination to this effect by the court prior to commencement.

## Persons to whom the notification requirements apply

### *Section 44– Persons to whom the notification requirement s apply*

121. The effect of section 44 is that the notification requirements do not apply to anyone under the age of 16 on the date of their being dealt with by the court in a way which would otherwise trigger those requirements.

### *Section 45 – Sentences or orders triggering notification requirements*

122. Section 45 provides that the notification requirements apply to a person who: (a) is convicted of a relevant offence and receives a sentence of imprisonment or detention for a period or term of 12 months or more in relation to that offence (including life and indeterminate sentences); or (b) is convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged in respect of such an offence punishable by 12 months' imprisonment or more and is made subject to a hospital order. The section sets out all the different types of sentences that could be given in each jurisdiction of the UK for 12 months or more, all of which will trigger the notification requirements when given for a relevant offence.

### *Section 46 – Power to amend specified terms or periods of imprisonment or detention*

123. Section 46 allows the Secretary of State to change the sentence threshold for a person to be subject to the notification requirements (currently 12 months) by an order subject to the affirmative resolution procedure. The order will have effect subject to the transitional provisions described in *subsection (3)*.

## Notification requirements

### *Section 47– Initial notification*

124. Section 47 sets out the information the person must supply to the police when first making a notification and the time scales within which that notification must be made. *Subsection (1)* provides that an individual must notify the police of the specified information within three days beginning with the day the person was dealt with for the offence or, where these provisions have retrospective application, within three days of the commencement of Part 4. In calculating the period within which an offender must give notification under *subsection (1)*, any time when the offender meets the conditions in *subsection (4)* – for instance any time when he is serving a sentence of imprisonment – does not count. As a person will usually be sent straight to prison (or hospital) following their conviction for a relevant offence, this will usually mean that the person will have to make their initial notification within three days of their release. *Subsection (6)* provides that where the notification requirements apply by virtue of a conviction prior to the commencement of this Part and the person is not still in prison or otherwise detained, initial notification must be given within 3 days of commencement.

125. *Subsections (2) and (3)* set out the information which is required from the person subject to the notification requirements, and includes the person's name (or names) and home address (or addresses), date of birth and national insurance number and any information prescribed in regulations. The definition of "home address" is found in section 60. This provides that where an offender is homeless or has no fixed abode his "home address" means an address or location where he can be regularly found. This might, for example, be a shelter, a friend's house or a park bench.

126. *Subsection (5)* relates to a case where a person who receives a triggering conviction and sentence is already subject to the notification requirements by virtue of an earlier offence. If in these circumstances the person has made an initial notification in accordance with *subsection (1)* in respect of the earlier offence, he is not required to make an initial notification again in accordance with *subsection (1)*. However, this applies only where the notification period in respect of the earlier offence lasts throughout the period specified in *subsection (1)*, as extended in accordance with *subsection (4)* if appropriate.

### *Section 48 – Notification of changes*

127. Section 48 sets out the requirement on a person to notify the police of changes to the details they have already notified. This includes the requirement in *subsection (3)* that a person who stays at an address in the UK for a period of seven days or for a combined period of seven days within 12 months, must notify the police of this address. This might apply for example where the person stays at a friend or relative's house or a hotel in the UK for this length of time.

128. *Subsection (4)* provides that a person who is subject to the notification requirements who is released from custody, released from imprisonment or detention pursuant to a sentence of a court, released from detention in hospital or detention under Immigration Acts must notify the police of this fact. This will mean for example that where a person who was given a suspended sentence subsequently has that sentence activated, the person must notify the police on release from prison. Section 60 defines "release" as including release on licence but not temporary release.

129. *Subsections (7) and (8)* provide that notification of any changes must be made before the end of the period of three days following the events specified in this section. Where the event is residing or staying at other premises as described in *subsection (3)* then the three day notification period begins when the seven day period set out in that subsection ends. When determining the period within which notification is to be given under this section, any periods spent in custody, imprisonment, detention or detained in a hospital or immigration detention are to be disregarded.

130. *Subsection (10)* provides that any notification under this section must be accompanied by the other information given to the police at the initial notification.

### *Section 49 – Periodic re-notification*

131. Section 49 provides that one year after the initial notification, a notification of change, a notification under this section, or a notification on return after absence from the UK, the individual must re-notify the police of the information specified in section 47(2). The effect of this section is that the person must re-notify their details to the police at least annually. However, the requirement does not apply if an individual is in custody by an order of a court, serving a sentence of imprisonment or detention, detained in a hospital, or detained under Immigration Acts on the date on which they are due to re-notify: in those circumstances the person is required to notify under section 48 (notification of changes) on their release (*subsections (2) and (3)*). These subsections are to ensure the person is not subject to overlapping requirements.

### *Section 50 – Method of notification and related matters*

132. This section describes how and where a person is required to notify information to the police under the provisions relating to initial notification, notification of change, periodic re-notification and notification on return after absence from the UK. *Subsection (2)* provides that the person must notify by attending a police station in the person's local police area (as defined in section 51) and making an oral notification to a police officer or other person authorised by the officer in charge of the station. Where the person is away from their usual home address for a period of seven days or a period amounting to seven days during a year, then they can notify at a police station local to their temporary address (*subsection (3)*).

133. The police must acknowledge the notification by the person in writing and in the form specified by the Secretary of State (*subsections (4) and (5)*).

134. *Subsection (6)* allows the police to take fingerprints from the person making the notification and to photograph any part of the person for the purpose of verifying their identity. "Photograph" is defined for these purposes in section 60 and could include for example taking an iris scan.

### *Section 51 – Meaning of "local police area"*

135. Section 51 defines "local police area" for the purposes of section 50(2) (method of notification). *Subsections (1)(b) and (c)* deal with cases where the person has no home address (as defined in section 60). A person may have no home address because for example they spend most of their time abroad and only return to the UK occasionally, or because they are itinerant.

### *Section 52 – Travel outside the United Kingdom*

136. Section 52(1) provides a power for the Secretary of State to make regulations setting out additional notification requirements for persons subject to the notification scheme in relation to foreign travel.

137. *Subsection (2)* sets out details the person must notify to the police concerning their departure (such as date of departure, the country the person is travelling to and their point of arrival) and allows the regulations to prescribe further details that must be given. *Subsection (3)* concerns the details that must be disclosed about the person's return to the UK: these will be given in the regulations.

138. *Subsections (4) and (5)* provide that a notification under this section must be made in accordance with the regulations; and that the regulations are subject to the affirmative resolution procedure.

## Period for which notification requirements apply

### *Section 53 – Period for which notification requirements apply*

139. Section 53 sets out the period during which a person will be subject to the notification requirements. The notification period for those aged 18 or over on the date of conviction for the triggering offence is: 30 years for those sentenced to 10 or more years' imprisonment or detention (including life or indeterminate sentences); 15 years for those sentenced to 5 or more years' but less than 10 years' imprisonment or detention; and 10 years in any other case, which includes adults sentenced to 12 months' or more but less than 5 years' imprisonment or detention, persons made subject to a hospital order and persons aged 16 or 17 on the date of their conviction (regardless of the sentence they are given).

140. The notification period starts with the day on which the person is dealt with for the offence (*subsection (4)*). However, *subsection (7)* provides that in determining whether the notification period has expired, any time the individual has spent in custody by order of a court, serving a sentence of imprisonment or detention, or detained in hospital or under the Immigration Acts shall be discounted. This means for example that where a person whose sentence attracts a notification period of 10 years goes to prison immediately following sentence, the 10 years will in effect run from the date the person is released.

141. *Subsection (5)* describes how the notification period operates in respect of a person who has been found to be under a disability but who is subsequently tried for the offence.

142. *Subsection (6)* specifies how to calculate the notification period where a person is sentenced for more than one terrorist-related offence and these sentences are terms of imprisonment running consecutively or partly concurrently. Where the terms are consecutive, they are to be added together. For example, where a person is sentenced to 4 years' imprisonment for one terrorist-related offence and 10 years' imprisonment for another such offence, to run consecutively, the sentence would be treated as 14 years' imprisonment for the purposes of working out the notification period (in this case, 30 years). Terms will be partly concurrent when they are imposed on different occasions. An example would be where a person is sentenced to 2 years' imprisonment for a terrorist-related offence, and 6 months into this term the person is sentenced to 4 years' imprisonment for a second such offence. Where this is the case, the notification period is based on the combined length of the terms minus any overlapping period. In the example given, the combined length of the sentences would be 6 years and the overlapping period would be the remaining 18 months of the 2-year sentence. So the sentence for the purposes of working out the notification period would be four and a half years (resulting in a 10 year notification period).

## Offences in relation to notification

### *Section 54 – Offences relating to notification*

143. Under section 54, failure without reasonable excuse to comply with any of the notification requirements, or providing false information in relation to any of the requirements, constitutes an offence. A reasonable excuse might be where a person does not notify within the required timescale because they are in hospital following an accident. Such an offence is an either way offence with a maximum sentence of five years' imprisonment (*subsection (2)*). *Subsection (4)* provides that the offence of failing to give a notification continues throughout the period during which the required notification is not given, but a person cannot be prosecuted more than once for the same failure. However if a person fails to comply with a requirement, is convicted for this offence and then fails to comply again in respect of the same requirement, that person commits a new offence and may be prosecuted again.

144. *Subsection (5)* provides that the offence may be tried in a court with jurisdiction in a place where the person resides or is found. The "is found" limb is to cover the case of a person with no fixed abode.

### *Section 55 – Effect of absence abroad*

145. Section 55 sets out how the notification requirements apply when a person subject to those requirements spends time abroad, either voluntarily or following removal by the authorities, for example having been deported or extradited.

146. The notification period continues to run whilst the person is outside the UK (*subsection (2)*).

147. *Subsections (3)* and *(4)* mean that a person must make their initial notification under section 47 before their departure unless that departure is a result of being removed from the United Kingdom by the authorities and the removal takes place before the expiry of the 3 day period within which such notification is to be given. "Removal from the United Kingdom" includes a person being removed or deported under the Immigration Acts, being extradited or being transferred under a repatriation of prisoners' agreement (*subsection (9)*). In those cases the person does not have to make their initial notification unless and until they return to the UK within the currency of the applicable notification period (see section 56(1)).

148. *Subsection (5)(a)* requires a person to notify the police of any changes to their details in accordance with section 48 before their departure overseas. This does not apply however where the person's departure is a result of being removed from the UK before the end of the period in which they were due to notify of any changes under section 48 *(subsection (6)*). Subsections *(5)(b)* and *(7)* provide that the requirement under section 48 to notify changes to notified information and the requirement under section 49 to make periodic re-notification do not apply during the period of absence abroad.

149. *Subsection (8)* has the effect that any periods during which a person is in custody, imprisonment, detention or is detained in hospital or immigration detention outside the United Kingdom, are to be discounted when determining whether the notification period has expired. (Section 53(7) makes provision for time spent in such custody, imprisonment or detention in the UK to be discounted from the notification period).

### *Section 56 –Notification on return after absence from UK*

150. Section 56 provides that a person must within 3 days of their return from abroad, provided their notification period has not expired, make a full notification to the police (of all the information listed in section 47(2)) if: (a) they were not required to make an initial notification by reason of being removed from the United Kingdom before such notification was due; (b) there has been any change to the information last given to the police; or (c) periodic re-notification fell due during the period of absence (*subsections (1)* and *(2)*). The 3 day period within which notification must be made is extended by any period the person is in custody by an order of a court, serving a sentence of imprisonment or detention, detained in a hospital, or detained under Immigration Acts *(subsection (3)*). The requirement to notify under this section does not apply if the person is removed from the United Kingdom within 3 days of their return from overseas (*subsection (4)*). *Subsection (5)* makes it clear that the requirement to notify under this section is in addition to the requirement to notify in accordance with regulations concerning foreign travel notification made under section 52.

## Supplementary provisions

### *Section 57 –Notification orders*

151. This section gives effect to Schedule 4 to the Act, which makes provision for notification orders. The police may apply for such an order in respect of an individual dealt with outside the UK for an offence which corresponds to one which would trigger the notification requirements in the United Kingdom, and its effect is to make such a person subject to the notification requirements of Part 4.

### *Schedule 4 – Notification Orders*

152. Schedule 4 makes provision for notification orders. A notification order might be sought in respect of a national of the United Kingdom who has been convicted of a foreign terrorism offence and who is deported to the United Kingdom on release from prison abroad. It might also be sought in respect of a foreign national with such a conviction who is in or is coming to the United Kingdom.

153. *Paragraph 2* defines "corresponding foreign offence" (those offences a conviction for which may trigger an application being made for a notification order). These are acts which constitute an offence in the jurisdiction in which they are committed and which "correspond to an offence to which this Part applies". This means that it would have been an offence under section 41 if committed in the United Kingdom (terrorism offences which, subject to the sentence threshold, automatically trigger the application of the notification requirements) or an offence with a terrorist connection.

154. *Paragraph 2(4)* provides that, on an application for a notification order, it will be deemed that an act corresponds to an offence to which Part 4 applies unless the person serves a notice disputing this and requiring the applicant to prove it or if the court allows the person to require such proof without the serving of a notice.

155. *Paragraph 3* sets out the three conditions for making a notification order. First, an individual must have been convicted of a corresponding foreign offence or been subject to a finding equivalent to one of insanity or disability and given a sentence or hospital order equivalent to that required for the notification requirements to apply where the conviction or relevant finding was in the UK (as set out in section 45). However, this condition is not met if the court is satisfied on the balance of probabilities that the foreign conviction, which is the basis for the application, was obtained as a result of a flagrant denial of the person's right to a fair trial (*paragraph 3(3)*). The concept of a "flagrant" denial of the right to a fair trial derives from case law of the European Court of Human Rights, which has also been adopted in the domestic courts. The term is to be read as having the same meaning which it is given by that jurisprudence, rather than having its dictionary meaning (see for example the case of *EM (Lebanon) v Secretary of State for the Home Department* [2008] UKHL 64).

156. The second condition, specified in *paragraph 3(4)*, is that the sentence must either have been imposed after the commencement of Part 4, or when the Part was commenced the individual was imprisoned or detained as a result of that sentence, or would have been but for being unlawfully at large or otherwise temporarily out of custody or was on licence or equivalent. The third condition is that the period for which a person would be subject to the notification requirements under section 53 has not expired (*paragraph 3(5)*).

157. A court must make a notification order if these three conditions are met (*paragraph 3(6)*).

158. *Paragraph 4* sets out the circumstances in which the police may apply for a notification order and the procedure to be followed in England and Wales. The application must be made by the chief officer of police for the area where the individual resides, or where the officer believes the person is or intends to come. This would enable, for example,

the chief officer of Kent Police to make an application in respect of a person who is currently in France but who is believed (by the chief officer) to have plans to arrive in Dover within the next few days. The application is to be made to the High Court.

159. *Paragraphs 5* and*6* make corresponding provision for Scotland and Northern Ireland. In Scotland, the application is to be made to the Court of Session.

160. *Paragraph 8* sets out the modifications to the notification provisions necessary to ensure they apply correctly in relation to a case where they apply by virtue of a notification order. In particular, section 47 (initial notification) is modified so that the requirement is for initial notification to be made within 3 days of the order being served.

### *Section 58 – Foreign travel restriction orders*

161. This section gives effect to Schedule 5, which makes provision for foreign travel restriction orders which may, in specified circumstances, be made in respect of a person subject to the notification requirements.

### *Schedule 5 – Foreign Travel Restriction Orders*

162. *Paragraph 1* of Schedule 5 introduces the concept of a foreign travel restriction order. Such an order may be made in respect of an individual subject to the notification requirements. This is a preventative order under which the court may prohibit the person from travelling abroad where this is necessary to prevent the person from engaging in terrorism activity abroad. The order may only impose such restrictions on travel as are necessary for such prevention.

163. *Paragraph 2* sets out the conditions for making a foreign travel restriction order. If the court is satisfied that these are met, it may make an order. First, the person must be subject to the notification requirements (including by virtue of a notification order). Second, the person must, since being dealt with for the offence, have behaved in a way that makes it necessary to prevent that person from taking part in terrorism activity outside the United Kingdom. "Terrorism activity" is defined in *paragraph 16* of this Schedule. In the case where the notification requirements apply to persons convicted etc before commencement, the person's behaviour must have taken place since commencement. The standard of proof in respect of the behaviour of which the court must be satisfied will be the heightened civil standard described in *R v Crown court of Manchester ex parte McCann* ([2002] UKHL39) as being virtually indistinguishable from the criminal one.

164. *Paragraph 3* sets out the circumstances in which the police may apply to a magistrates' court for a foreign travel restriction order and the procedure for doing so in England and Wales. *Paragraphs 4* and*5* make corresponding provisions for Scotland and Northern Ireland.

165. *Paragraph 6* provides that a foreign travel restriction order may prevent the person subject to it from travelling to any country outside the UK which is named or described in the order, travelling to any country outside the UK other than the countries named in the order (this may be used, for example, where the person is banned from travelling anywhere in the world other than to a named country which he may need to visit for family reasons) or travelling to any country outside the United Kingdom. A person subject to an order prohibiting all foreign travel must surrender all their passports at the police station specified in the order on or before the order takes effect or within a specified time. The person's passports must be returned as soon as is reasonably practicable after the order ceases to have effect. "Passport" is defined in section 60 and includes both foreign and UK passports and other travel documents.

166. *Paragraph 7* provides that the foreign travel restriction order lasts for a fixed period of not more than 6 months, to be specified in the order, and that where the person is already subject to a foreign travel restriction order, the earlier order ceases to have effect.

167. *Paragraphs 8* sets out provisions permitting the variation, renewal or discharge of a foreign travel restriction order in England and Wales. A person may wish to apply for a variation of their order if for example the order prohibits travel to a particular country but during the course of the order the person has to attend an urgent business meeting there. The police may wish to apply for a renewal of an order if, on the expiry of the previous order, they still have cause to believe that the person poses a risk of becoming involved in terrorism activity abroad. Any of the persons specified in *paragraph 8(1)* may make an application for an order varying, renewing or discharging a foreign travel restriction order.

168. *Paragraph 8(2)* provides that an application for variation, renewal or discharge may be made to the court which made the original order; or to a magistrates' court in the area where the subject of the order resides (this will generally be the case where the subject of the order is making the application); or to any magistrates' court in the police area of the chief officer of police if the police are making the application.

*Paragraph 8(4)* provides that the court considering the application must hear any person mentioned in *paragraph 8(1)* who wishes to be heard. Having done so, *paragraph 8(3)* allows the court to make any order varying, renewing or discharging the order it considers appropriate, subject to the restrictions in *paragraph 11*. *Paragraphs 9* and*10* make corresponding provision for Scotland and Northern Ireland.

169. *Paragraph 11* provides that a foreign travel restriction order may only be renewed or varied so as to contain prohibitions necessary to prevent the person subject to the order from taking part in terrorism activities outside the UK.

170. *Paragraph 12* provides, for England and Wales, a right of appeal to the Crown Court for the person subject to the order against (a) the making of a foreign travel restriction order or (b) against the making of an order varying, renewing or discharging a foreign travel order, or a refusal to make such an order. *Paragraphs 13* and*14* make corresponding provision for Scotland and Northern Ireland.

171. *Paragraph 15* makes it an offence for a person to, without reasonable excuse, breach any prohibition or fail to comply with a requirement contained within a foreign travel restriction order. *Paragraph 15(4)* provides that the court cannot make an order for conditional discharge where someone is convicted of this offence in England and Wales or Northern Ireland, or a probation order where the conviction is in Scotland.

### *Section 59– Application of Part to service offences and related matters*

172. This section gives effect to Schedule 6 to the Act which provides that the notification provisions in Part 4 apply to persons dealt with in service courts in the same way they do to persons dealt with in civilian courts.

### *Schedule 6 – Notification Requirements: Application to Service Offences*

173. This Schedule makes provision for the application of the notification requirements in Part 4 of the Act to offences in Armed Forces legislation (service offences). The Schedule prescribes which service offences the notification requirements will apply to, and the sentences and orders made by service courts which will trigger the notification requirements.

### *Section 60 – Minor definitions for Part 4*

174. Section 60 provides definitions of terms used in Part 4, including in Schedules 5 and 6.

### *Section 61 – References to a person being "dealt with" for an offence*

175. Section 61 defines what is meant by the various references in Part 4 to a person or an offence being "dealt with".

176. Generally, this term is to mean when the court of first instance sentences a person or makes the person subject to a hospital order in respect of the offence (*subsections (1)* , *(2)* and *(4)*).

177. However, *subsection (3)* makes provision for circumstances where the original decision is varied (for example the original sentence being altered, set aside or quashed (*subsection (7)*)). Where a conviction for a different offence is substituted and the conditions for the application of the notification requirements are also met in respect of that substitution, the person will be treated as if they had been dealt with at the time of the original decision. Otherwise, if the result of the variation is that the sentence threshold is not met, the notification requirements will be treated as never having applied; and if the sentence meets the threshold for the first time, the notification requirements will apply from the date of the variation. If the sentence is varied across one of the sentence thresholds for the notification periods that apply to adults, the notification period will be adjusted accordingly. *Subsections (5)* and *(6)* set out how the term "dealt with" is to be interpreted in the provisions relating to offences dealt with prior to commencement.

## Part 5 – Terrorist Financing and Money Laundering

### Terrorist financing and money laundering

### *Section 62 – Terrorist financing and money laundering*

178. Section 62 introduces Schedule 7 to the Act. Schedule 7 sets out new powers for the Treasury to direct financial and credit institutions to take certain action in respect of business with persons in a non-EEA country of money laundering, terrorist financing or proliferation concern. The Schedule also makes provision for a supervisory regime, and for the imposition of civil and criminal penalties.

### *Schedule 7 – Terrorist financing and money laundering*

179. Part 1 of the Schedule sets out the conditions for giving a direction. *Paragraph 1* provides that the Treasury may act in circumstances where: (a) the Financial Action Task Force has called for measures to be taken against a country because of the risk it presents of money laundering or terrorist financing; (b) the Treasury reasonably believe a country poses a significant risk to the UK's national interests because of the risk of money laundering or terrorist financing there; or (c) the Treasury reasonably believe a country poses a significant risk to the UK's national interests because of the development or production of nuclear, radiological, biological or chemical weapons there, or the facilitation of such development. *Paragraph* 2 defines terms used in *paragraph* 1.

180. Part 2 sets out the persons to whom a direction may be given. *Paragraph 3* provides that a direction may be addressed to a particular person operating in the financial sector, any description of persons operating in that sector, or all persons operating in that sector. *Paragraphs 4* to*7* define who is a person operating in the financial sector. *Paragraph 8* provides that the Treasury may by affirmative order amend the definition.

181. Part 3 sets out the requirements that may be imposed by a direction. *Paragraph 9* provides that the Treasury may issue a direction imposing requirements in relation to transactions or business relationships with a person carrying on business in the country, the government of the country, or a person resident or incorporated in the country. A direction may require enhanced customer due diligence measures to be undertaken before entering into or during a business relationship or transaction; enhanced ongoing monitoring of a business relationship; the provision of specified information and documents relating to transactions and business relationships; and that new business relationships or transactions should not be entered into or existing relationships or transactions should cease (*paragraphs 10* to *13*).

182. Part 4 sets out the procedural requirements for directions. *Paragraph 14* provides that directions addressed to a description of persons in the financial sector or to all persons in the sector must be contained in an order. Where such a direction requires the limitation or cessation of business it is subject to the affirmative procedure; otherwise it is subject to the negative resolution procedure. A direction to a particular person need not be contained in an order. *Paragraphs 15* and *16* require directions addressed to a particular person to be brought to the attention of that person, and general directions to be publicised. *Paragraph 17* makes provision for the issue of licences to exempt acts which would otherwise be subject to the requirements of a direction to cease or limit business.

183. Part 5 makes provision for enforcement authorities to obtain information in connection with the exercise of their functions under the Schedule. *Paragraph 18* defines enforcement authority and enforcement officer. *Paragraph 19* provides for enforcement officers to require by notice the provision of information or documents. *Paragraph 20* provides for a power of entry and inspection without a warrant and *paragraph 21* provides for entry to premises under a warrant. *Paragraph 22* makes provision for information which would be protected by legal professional privilege.

184. Part 6 provides for the imposition of civil penalties by enforcement authorities. *Paragraph 25* provides that an enforcement authority may impose a penalty on a person who fails to comply with a requirement imposed by a direction or by a condition of a licence. *Paragraph 26* imposes procedural requirements where the Commissioners for HM Revenue and Customs impose penalties, and provides a right to request a review. *Paragraph 27* imposes procedural requirements for penalties imposed by the other enforcement authorities (the Financial Services Authority, Office of Fair Trading and the Department of Enterprise Trade and Investment in Northern Ireland). *Paragraph 28* provides for appeal to a tribunal against the imposition of a penalty. *Paragraph 29* makes provision for the payment and recovery of penalties.

185. Part 7 makes provision for offences. *Paragraphs 30* and *31* provide that it is an offence to fail to comply with a requirement imposed by a direction, or to provide false information in order to obtain a licence. *Paragraph 32* provides that conduct outside the UK by a UK national or body may constitute an offence. *Paragraph 33* contains provisions regarding the prosecution of offences. *Paragraph 34* provides for courts to have jurisdiction over offences committed outside the UK. *Paragraph 35* concerns the time limit for bringing summary proceedings. *Paragraph 36* provides that officers of bodies corporate are guilty of an offence as well as the body itself, if they have consented or connived in its commission or if the offence is attributable to the officer's neglect. *Paragraph 37* makes provision for proceedings against unincorporated bodies.

186. Part 8 provides, in *paragraph 38*, for the Treasury to report annually to Parliament on their exercise of powers under the Schedule. *Paragraph 39* imposes a duty on the supervisory authorities (each of the enforcement authorities is responsible for supervising particular types of bodies) to secure compliance by those it supervises with the requirements of directions. *Paragraph 40* makes provision for the Treasury to assist a supervisory authority or other body in drawing up guidance. *Paragraph 41* makes provision regarding the functions of the Financial Services Authority, and civil penalties imposed by the Authority. *Paragraph 42* makes provision as to the giving of notices under the Schedule. *Paragraph 44* defines United Kingdom person and *paragraph 45* contains other interpretative provisions.

## Part 6 – Financial Restrictions Proceedings

### *CHAPTER 1 – Application to set aside financial restrictions decision*

#### *Section 63 – Application to set aside financial restrictions decision*

187. *Subsection (1)* applies this section to any decision of the Treasury in the exercise of their functions under:

a) the UN Terrorism Orders (defined below),

b) Part 2 of the Anti-Terrorism, Crime and Security Act 2001, or

c) Schedule 7 to this Act.

188. *Subsection (2)* creates a statutory power for a person affected by such a decision to apply to have it set aside.

189. *Subsection (3)* provides that the court shall apply judicial review principles to any such application. *Subsections (4)* and *(5)* set the scope of the court's power to grant relief if it concludes that a decision should be set aside.

190. *Subsections (6)* and *(7)* apply the section to any application made after the commencement of the section including where the decision of the Treasury to which the application relates was taken before commencement.

#### *Section 64 – UN terrorism orders*

191. *Subsection (1)* contains the list of the UN terrorism orders; *subsection (2)* includes a power for the Treasury, by order, to make changes to the list and *subsection (3)* provides that such an order be subject to a negative resolution procedure.

### *CHAPTER 2 – Financial restrictions proceedings*

#### Introductory

#### *Section 65 – Financial restrictions proceedings*

192. Section 67 defines "financial restrictions proceedings" for the purpose of Chapter 2 of Part 6 as proceedings on an application under section 63 or on a claim arising from any matter to which such an application relates.

#### Rules of court, disclosure and related matters

#### *Section 66 – General provision about rules of court*

193. Section 66 contains general provisions about the rules of court for financial restrictions proceedings. In particular, *subsection (2)* requires the maker of the rules of court to have regard to both the need for a proper review of the decision subject to challenge, and the need to ensure that disclosures are not made where this would be contrary to the public interest. *Subsections (3)* and *(4)* contain a non-exhaustive list of matters which the rules of court may cover. This includes provision concerning:

a) mode of proof and evidence;

b) proceedings being determined without a hearing;

c) legal representation;

d) the extent to which full particulars of reasons for decisions must be given;

e) proceedings in the absence of parties and their legal representatives;

f) the function of a special advocate; and

g) summaries of evidence taken in a party's absence.

### *Section 67 – Rules of court about disclosure*

194. Section 67 requires rules of court to contain certain provisions relating to disclosure, including rules relating to applications by the Treasury to withhold material from disclosure. *Subsection (3)* provides that the Treasury must be given an opportunity to apply for permission not to disclose sensitive material (and the application must be heard in private) and provides that the court must be required to give permission for material not to be disclosed if it considers that the disclosure would be contrary to the public interest. Where the court gives permission for material not to be disclosed, it must consider requiring the Treasury to provide a summary of the material, although such a summary must not itself contain material the disclosure of which would be contrary to the public interest.

195. If, having applied, the Treasury do not receive the court's permission to withhold sensitive material, but elect not to disclose it anyway, rules of court must authorise the court to direct either that the Treasury may not rely on the material or, if it adversely affects their case, to make such concessions as the court specifies (*subsection (5)*).

196. *Subsection (6)* confirms that nothing in section 67, or in rules of court made under section 67, is to be read as requiring the court to act in a manner inconsistent with Article 6 of the European Convention on Human Rights. This provision is included to ensure that this Part, and rules of court made under it, comply with the European Convention on Human Rights, following the House of Lords decision in *Secretary of State for the Home Department* v *MB* ([2007] UKHL 46).

### *Section 68 – Appointment of special advocate*

197. Section 68 provides for the appointment of a special advocate in financial restrictions proceedings. This procedure corresponds with the special representation procedure contained in the Prevention of Terrorism Act 2005 (see paragraph 7 of the Schedule to the Act). A special advocate is a qualified lawyer who has passed through the Government's security vetting process, whose role is to represent the interests of a party to financial restrictions proceedings (including any appeal) in circumstances where that party and his own legal representative are excluded from the proceedings. The special advocate is appointed by the appropriate law officer (as described in *subsection (3)*) and is not responsible to the party whose interests he is appointed to represent.

### *Section 69 – Intercept evidence*

198. Section 69 amends section 18 of the Regulation of Investigatory Powers Act 2000 (c.23) ("RIPA"), to enable the disclosure of intercepted communications in financial restrictions proceedings. Section 17 of RIPA contains a general prohibition on the use of intercepted communications in legal proceedings. Section 18 of RIPA lists certain exceptions to that general prohibition and this section adds financial restrictions proceedings to that list of exceptions.

### *Section 70 – Qualification of duty to give reasons*

199. Section 70 qualifies the Treasury's disclosure obligations under paragraph 11, Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001 ("ATCSA"). The Treasury shall not be required to disclose under paragraph 11 of Schedule 3 to the ATCSA any information which it would not be required to disclose under Part 6.

### Supplementary

#### *Section 71 – Allocation of Proceedings to Queen's Bench Division*

200. Section 71 provides that financial restrictions proceedings are to be allocated to the Queen's Bench Division.

#### *Section 72 – Initial exercise of powers by Lord Chancellor*

201. Section 72 allows the Lord Chancellor, the first time the power is used, to exercise the power conferred by sections 66 and 67 to make rules of court. The Lord Chancellor must consult the Lord Chief Justice (or, where appropriate, the Lord Chief Justice of Northern Ireland), before making such rules, but this requirement may be satisfied by any consultation that takes place before commencement (see *subsection (3)*). The rules will come into effect only if approved by the House of Commons and the House of Lords within 40 days of being made (*subsection (4)*). These rules will cease to have effect 40 days after being laid before Parliament if not approved by both the House of Commons and the House of Lords within that period.

## Part 7 – Miscellaneous

### Inquiries

#### *Section 74 – Inquiries: intercept evidence*

202. Section 74 amends section 18 of RIPA to allow disclosure of intercept material to a person appointed as counsel to an inquiry held under the Inquiries Act 2005, in addition to the panel of an inquiry. But the inquiry panel may not order the disclosure of intercept material unless it is satisfied that there are exceptional circumstances that make the disclosure essential (see section 18(8A) of RIPA).

### Amendment of definition of "terrorism" etc

#### *Section 75 – Amendment of definition of "terrorism" etc*

203. Section 75 gives effect to Lord Carlile's 12th recommendation in his January 2007 report on the definition of terrorism. This was that the definition of terrorism in section 1(1) of the 2000 Act be amended to include, in paragraph (c), the purpose of advancing a racial cause (in addition to a political, religious or ideological cause). Although a racial cause will in most cases be subsumed within a political or ideological cause this amendment is designed to put the matter beyond doubt that such a cause is included. A similar amendment is made to paragraph 4(2)(c) of Schedule 21 to the Criminal Justice Act 2003 which makes provision in relation to the minimum term for mandatory life sentences. That paragraph provides that the starting point for a murder done for the purpose of advancing a political, religious or ideological cause will be life. And similar amendments are made to other pieces of legislation where these words appear.

### Terrorist offences

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

204. This section inserts a new section 58A into the 2000 Act which creates a criminal offence. The offence is committed when a person either elicits or attempts to elicit information about a member of the armed forces or the intelligence services or a constable, which is likely to be useful to a person committing or preparing an act of terrorism, or publishes or communicates information of that kind. This offence is based in part on the offence in section 103 of the 2000 Act (which ceased to have effect on 31 July 2007 by virtue of the Terrorism (Northern Ireland) Act 2006). A person

who is able to prove that he had a reasonable excuse for his actions is able to rely on that as a defence. This must be read with section 118 of the 2000 Act as amended by section 76(3), the effect of which is to limit the burden on the accused to an evidential burden, so that if that person adduces evidence sufficient to raise an issue with respect this defence, the prosecution must then prove beyond reasonable doubt that there is no such defence. The offence is punishable with a maximum sentence of 10 years imprisonment, or to a fine or both.

### *Schedule 8 – Offences relating to information about members of armed forces etc: supplementary provisions*

205. New section 58A(5) of the 2000 Act adds supplementary provisions in an additional Schedule 8A to the 2000 Act (inserted by Schedule 8 to this Act). These provisions make the offence compliant with the "E-Commerce Directive" (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Official Journal L 178 17/07/2000 p.1-16)).

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

206. *Subsection (2)* of this section makes a clarifying amendment to section 19(1) of the 2000 Act. This makes it clear that the offence in section 19 of failing to disclose a belief or suspicion of an offence under sections 15 to 18 (a terrorist finance offence) applies to all persons in employment, whether or not they are employed in a trade, profession or business.

207. *Subsection (3)* inserts a new section 23C into the 2000 Act defining "employment" and a corresponding definition of "employer" for the purposes of Part 3 of that Act (terrorist property). The definition is wider than the usual definition of employment, including contractors, office-holders (such as trustees of a charity), individuals on a formal work experience programme or training (for example an intern in a bank) and volunteers.

208. *Subsection (4)* makes transitional provision to the effect that, where the wider definition of employment catches a person it did not previously catch, that person will have a duty to inform of a belief or suspicion that a terrorist offence has been committed if they continue to hold that belief or suspicion after commencement, even if the information on which it is based came to the person before commencement.

## Control orders

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

209. This section adds three new sections after section 7 of the Prevention of Terrorism Act 2005 ("PTA"). The new sections provide constables with the power to enter and search the premises of individuals subject to control orders who are reasonably suspected of absconding or of failing to grant access to premises when required to do so. They also allow a constable to apply to a justice of the peace (or, in the case of Scotland, a sheriff and, in the case of Northern Ireland, a lay magistrate) for a warrant to enter and search premises for the purpose of monitoring compliance with a control order. In the context of the PTA "premises" can include vehicles that are owned or controlled by the controlled person (see section 15 of that Act). The three new sections are added by *subsection (1).*

210. New section 7A (absconding) gives a constable the power to enter (if necessary by force) and search premises if the officer reasonably suspects that the controlled person has absconded. Once a constable has this initial "reasonable suspicion" the entry and search power can be exercised to determine whether the controlled person has in fact absconded and, if it appears that he has, to search for any material that may assist in apprehending him. However in circumstances where, prior to these powers being exercised a constable knows that a controlled person has absconded he can enter and

search the property for any material that may assist in apprehending the controlled person without the purpose of this entry and search being to determine whether there has been an abscond.

211. The term "abscond" is not defined in the PTA and it is intended that it should have its ordinary meaning: "to leave hurriedly and secretly, flee from justice" and, in this particular context, to avoid the obligations of a control order. The premises to which new section 7A applies are:

a) the residence of an individual subject to a control order;

b) any other premises to which a controlled person is required to grant access in accordance with an obligation imposed by or under a control order; and

c) premises to which a controlled person has in the past but is no longer required to grant access in accordance with an obligation imposed by or under a control order and with which there is reason to believe that the controlled individual is or was recently connected.

212. New section 7B (failure to grant access to premises) gives a constable the power to enter (if necessary by force) and search premises where the constable reasonably suspects that the controlled person has failed to permit entry (as required by the control order) at a time when, by virtue of an obligation under the control order, the person is required to be in that person's residence. The purpose of any such entry and search is to determine whether any of the obligations imposed by a control order have been contravened or, if it appears that there has been such a contravention, to search for any material that may assist in any subsequent investigation. The premises to which this new section applies are premises to which the controlled person is obliged to grant access under the person's control order obligations.

213. New section 7C (monitoring compliance with a control order) allows a constable to apply to a justice of the peace (or, in Scotland, a sheriff and, in Northern Ireland, a lay magistrate) for a warrant to enter and search the premises of a controlled person to determine whether a controlled individual is complying with that person's obligations. Such a warrant may only be granted if the justice of the peace (or sheriff or lay magistrate) is satisfied that it is necessary for the purposes of determining whether the controlled person is complying with the control order obligations. In order for the requirement of necessity to be met it is envisaged that such warrants will most often be applied for where the police have previously attempted to conduct unannounced visits that have failed due to the apparent absence of the individual. The premises to which this new section applies are the same as for new section 7A (see above).

214. *Subsection (2)* of section 78 provides that obstruction of a police officer acting under any of new sections 7A, 7B or 7C is an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale (currently £5000) and a prison sentence up to 51 weeks (in England and Wales) or six months (in Scotland and Northern Ireland). The powers of a magistrates' court to impose a prison sentence of 51 weeks are provided by section 281(5) of the Criminal Justice Act 2003. This provision has not yet been commenced and until it is reference to the prison sentence of 51 weeks should be read as a reference to a prison sentence of 6 months (see section 9(8) of the PTA).

215. *Subsection (3)* provides that these amendments will apply regardless of when the control order was made.

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

216. Section 1(9) of the PTA defines involvement in terrorism-related activity as any one or more of the following:

a) the commission, preparation or instigation of acts of terrorism;

b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;

c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so;

d) conduct which gives support or assistance to individuals who are known or believed to be involved in terrorism-related activity.

217. *Subsection (1)* of section 79 amends section 1(9)(d) so that it reads "conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling within paragraphs (a) to (c)."

218. This amendment removes an unintended ambiguity in the original definition, which could be read as capturing individuals who unknowingly provided support or assistance to individuals known or believed by the Secretary of State to be involved in terrorism-related activity. It also removes an unnecessary potential circularity in the definition. Currently, an individual (A) could have a control order imposed on him because he was supporting another individual (B) known or believed to be supporting a third person (C) involved in terrorism-related activity within paragraphs (a) to (c). There could in theory be any number of links in this chain: A knows or believes B who knows or believes C who knows or believes D, and so on before it leads to someone (Z) who is actually engaged in conduct referred to within paragraphs (a) to (c). At present all persons in this chain could have a control order imposed against them. The definition was not and is not intended to be this wide. This amendment ensures that only support for someone directly involved in terrorism-related activity (conduct falling within section 1(9)(a) to (c)) is captured so that in the example referred to above only the person directly giving support and assistance to Z would be caught by the definition.

219. *Subsection (2)* provides that the revised definition set out in *subsection (1)* is deemed to have had effect since the 2005 Act came into force. This is the way in which the provision has always been interpreted and reflects the fact that the "tightened" definition is the one that has always been applied. This subsection is also intended to ensure that the basis upon which previous or current control orders have been made or upheld by the courts is not called into question as a result of a change in the definition of terrorism-related activity.

### *Section 80 –Time allowed for representations by controlled persons*

220. Section 3 of the PTA makes provision in relation to the supervision by the court of the making of non-derogating control orders. Once a non-derogating control order has been made, the Secretary of State's decision to make the control order and impose the obligations in it are subject to mandatory review by the court. (In the case of a controlled person whose principal of residence is in Scotland the court is the Outer House of the Court of Session; in the case of a controlled person whose principle place of residence is in Northern Ireland the court is the High Court in Northern Ireland; and in any other case the court is the High Court in England and Wales (see section 15 of the PTA)). This review is a full hearing with the court applying judicial review principles to the decisions taken (this is commonly known as a "3(10) hearing" after the section in the PTA that provides for it). Section 3 requires the court to give an individual subject to a control order the opportunity to make representations to the court about directions for the 3(10) hearing in relation to that control order.

221. *Subsections (2)* and *(3)* of this section amend section 3 so that when a control order is made following permission from the court, the individual will be given an opportunity to make representations within seven days from the time that the order is served upon him and not, as currently, seven days from the time the court gives permission. There may for operational reasons be a gap – possibly longer than seven days – between the time a control order is made and the time it is served. The PTA as currently drafted potentially

requires the court to give an individual the opportunity to make representations before the order is served – and thus before the individual is aware of the control order or bound by its obligations. This is impractical and operationally undesirable. This amendment will apply to control orders made after this section comes into force.

222. By virtue of new *subsection (7A)(b)*, the amendment does not change the position regarding the timing of the opportunity for an individual to make representations in relation to urgent control orders made without the permission of the court. By definition, the individual in such cases is already aware of the control order and bound by its obligations.

### *Section 81 – Applications for anonymity for controlled persons*

223. *Subsections (1)* to *(3)* of this section make a technical amendment to the anonymity provisions in paragraph5 of the Schedule to the PTA. The intention of *paragraph 5* is to ensure that the anonymity of individuals subject to a control order can be maintained throughout the process. Paragraph 5 states that anonymity orders can be applied for after a control order has been made. It is the Secretary of State that has the power to make a non-derogating control order. However (except in cases of urgency) before the power to make an order arises the Secretary of State must apply to the court for permission to make a control order (or in the case of derogating control orders, when the Secretary of State applies for the court to make such an order). The amendments in this section mean that the Secretary of State can make an application for an anonymity order to protect the identity of the controlled person at the stage when permission is being sought from the court to make the control order rather than when the control order is actually made.

224. *Subsection (4)* provides that this amendment will be deemed always to have had effect. This reflects the original policy intention and current practice followed by the courts, which the section does not seek to change. Moreover, *subsection (4)* ensures that all current anonymity orders made when permission for the control order was sought from the courts and before this section comes into force will be unaffected.

## Pre-charge detention of terrorist suspects

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

225. *Subsection (1)* makes a minor amendment to paragraph 9 of Schedule 8 to the 2000 Act (direction that detained person may consult a solicitor only within sight and hearing of a qualified officer). This is a consequential amendment that was overlooked when that Schedule was amended by the Proceeds of Crime Act 2002.

226. *Subsection (2)* amends paragraph 29(4) of Schedule 8 to the 2000 Act to remove the words "after consulting the Lord Chancellor". This paragraph defines "judicial authority" for the purposes of hearings extending pre-charge detention for up to 14 days – which may, as amended, be conducted in England and Wales by a District Judge designated by the Lord Chief Justice and in Northern Ireland, by a county court judge designated by the Lord Chief Justice of Northern Ireland.

## Forfeiture of terrorist cash

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

227. This section amends paragraph 3 of Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001 ("ATCSA") (detention of seized cash), so as to provide that in calculating the period of 48 hours for which cash may initially be detained, only working days are taken into account. Paragraph 3(1) corresponds to section 295(1) of the Proceeds of Crime Act 2002, which was amended in similar terms by section 100 of the Serious Organised Crime and Police Act 2005.

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

228. This section substitutes paragraphs 7 and new 7A in Schedule 1 to ATCSA (appeals against decision in forfeiture proceedings). Some of the amendments are to take account of amendments made to the 2000 Act by section 22 of the Terrorism Act 2006 (name changes by proscribed organisations). Specific provision is made for the timing of appeals against a decision in forfeiture proceedings relating to "terrorist cash" where the forfeiture depends on the proscription of an organisation and the organisation in question is subsequently de-proscribed as a result of an appeal to the Proscribed Organisations Appeal Commission (POAC). Section 22 of the 2006 Act amended the 2000 Act to allow the Secretary of State to specify by order an alternative name for a proscribed organisation and to provide for appeals to POAC against such orders. Where the appeal is successful, the Secretary of State is required by section 5(5) of the 2000 Act to make an order under section 3(8) effectively revoking the earlier order. New paragraph 7A takes account of this circumstance and provides that an appeal may be brought at any time before the end of 30 days beginning with the date the de-proscription order comes into force.

229. Paragraph 7 of Schedule 1 to ATCSA corresponds to section 299 of the Proceeds of Crime Act 2002. That section was substituted by section 101 of the Serious Organised Crime and Police Act 2005. The paragraph 7 substituted by this section reflects the changes made to section 299 of the 2002 Act. These are: (a) the applicant for a forfeiture order is given the right of appeal against the court's refusal to make an order; and (b) the requirement that the hearing of an appeal against a forfeiture order is by way of a rehearing is omitted.

230. The new paragraph 7 also provides that the right of appeal in Scotland is to the sheriff principal (rather than the Court of Session).

## Costs of policing at gas facilities

### *Section 85 – Policing at gas facilities: England and Wales*

231. Section 85 allows the Secretary of State to require gas transporters to pay certain costs of policing gas facilities in England and Wales. *Subsection (1)* sets out the circumstances in which these new powers may be exercised by the Secretary of State: the Secretary of State must consider that the provision of "extra police services" is necessary because there is a risk of loss or of disruption to the supply of gas which would have a serious impact on the United Kingdom (or a part of it).

232. *Subsection (2)* defines "extra police services" to mean either the use of police services from the Ministry of Defence Police under section 2(2)(e) of the Ministry of Defence Police Act 1987 (agreement by Secretary of State to provide MOD police services) or from English and Welsh police forces under section 25(1) of the Police Act 1996 (provision of special services on request).

233. *Subsection (3)* provides that the Secretary of State may require a designated gas transporter to pay all or part of the costs of the extra policing incurred by the Secretary of State.

234. *Subsection (4)* defines "gas facility" and *subsection (5)* explains what is meant in *subsection (3)* by a gas transporter having an interest in a gas facility.

### *Section 86 – Policing at gas facilities: Scotland*

235. Section 86 makes corresponding provision for Scotland. *Subsection (1)* of this section makes identical provision to that which applies in England and Wales.

236. *Subsection (2*) defines "extra police services" to mean either the use of police services from the Ministry of Defence Police under section 2(2)(e) of the Ministry of Defence

Police Act (as for England and Wales) or police services provided under an agreement, entered into at the request of the Secretary of State, between the occupier of the gas facility and the police authority, chief constable of the police force or joint police board, for the police area where the gas facility is situated.

237. *Subsection (3)* provides that where the services of the Ministry of Defence Police have been used the Secretary of State may require a designated gas transporter to pay all or part of the costs of the extra policing incurred by the Secretary of State.

238. *Subsection (4)* provides that if requested by the occupier of the gas facility the Secretary of State must require a designated gas transporter to pay the reasonable costs incurred by the occupier under any agreement entered into at the Secretary of State's request, between the occupier of the gas facility and the police authority, chief constable of the police force or joint police board, for the police area where the gas facility is situated.

### *Section 87 – Designated gas transporters*

239. *Subsection (1)* of this section provides that the Secretary of State may by order designate a person as a gas transporter for the purposes of sections 85 to 90. A designated gas transporter must be a holder of licence issued under section 7 of the Gas Act 1986. Such an order is subject to negative resolution procedure (see *subsection (3)*).

### *Section 88 – Costs of policing at gas facilities: recovery of costs*

240. This section makes provision for the designated gas transporter to be able to recoup the costs that it has had to pay for the extra policing from its customers. *Subsection (1)* of this section empowers the Secretary of State to determine the amount of the costs to be paid by the designated gas transporter under section 85 or 86, the manner and time when the costs are to be paid and the persons to whom the costs are to be paid.

241. *Subsection (2)* provides that where a designated gas transporter is required to pay costs under section 86, the occupier of the gas facility can recover the costs directly from the designated gas transporter.

242. *Subsection (3)* provides that, despite any licence condition to the contrary, a designated gas transporter can, in determining its charges for conveying gas, take into account: (a) any payments it has made under sections 85 or 86; and (b) reasonable costs that it has incurred as a party to an agreement under section 13 of the Police (Scotland) Act 1967 for the guarding, patrolling and watching of the gas facility entered into at the Secretary of State's request.

243. *Subsection (4)* makes provision for the Secretary of State to direct the Gas and Electricity Markets Authority (GEMA) to allow the designated gas transporter to take into account in determining its charges: (a) any payments it has made under sections 85 or 86; or (b) any payments made or costs incurred in or in relation to a specified period.

244. *Subsection (5)* imposes a consultation requirement upon the Secretary of State to consult GEMA and the designated gas transporter prior to making a direction under *subsection (4).*

### *Section 89 – Costs of policing at gas facilities: supplementary provisions*

245. This section sets out an additional consultation obligation upon the Secretary of State. Under *subsection (1)* the Secretary of State must consult a designated gas transporter and GEMA prior to: (a) requiring the designated gas transporter to pay costs under sections 85 or 86 for the first time; (b) requiring the gas transporter to pay costs in respect of a particular gas facility; and (c) requiring the gas transporter to pay the costs of extra police services provided on a subsequent occasion at a gas facility.

246. *Subsection (2)* states that the Secretary of State is not required to: (a) consult anyone other than GEMA or the designated gas transporter before requiring a designated gas

transporter to pay costs under section 85 or 86; or (b) to take into account representations made after 28 days from when the designated gas transporter or GEMA were first consulted under *subsection (1)*.

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

247. This section makes provision for sections 85 – 89 to apply to the costs of providing extra policing at key gas sites from 16 January 2007 up to the day before these provisions come into force, in the same way that these provisions will apply after this period. All the provisions relating to costs of policing at gas facilities will be commenced two months after Royal Assent (see section 100(3)).

## Appointment of special advocates in Northern Ireland

### *Section 91 – Appointment of Special Advocates in Northern Ireland*

248. This section provides that certain references to the Attorney General for Northern Ireland in current legislation are substituted with references to the Advocate General for Northern Ireland. The purpose of the amendments is to enable the transfer of a number of functions of the Attorney General for Northern Ireland relating to the appointment of special advocates to the Advocate General for Northern Ireland. The provisions of primary legislation to be amended are contained in section 6(2)(c) of the Special Immigration Appeals Commission Act 1997, paragraph 7(2)(c) of Schedule 3 to the 2000 Act, and paragraph 6(2) (c) of Schedule 6 to the ATCSA. A provision of secondary legislation contained in rule 9(1) of the Northern Ireland Act Tribunal (Procedure) Rules 1999 is also to be amended. These changes will come into force upon the devolution of justice matters in Northern Ireland, and the coming into force of section 27 of the Justice (Northern Ireland) Act 2002 (c.26) which creates the office of Advocate General for Northern Ireland.

## Part 8 – Supplementary Provisions

## General definitions

### *Section 92 –Meaning of "terrorism"*

249. This section defines "terrorism" for the purposes of the Act by reference to the definition of terrorism in section 1 of the 2000 Act (which is amended by section 75 of the Act).

### *Section 93 – Meaning of offence having a "terrorist connection"*

250. This section defines for the purposes of this Act what is meant by an offence having a "terrorist connection". This is relevant to the provisions on aggravated sentencing (see sections 30 to 33) which apply in England and Wales and in Scotland (but not in Northern Ireland), forfeiture (see section 35) and notification (see section 42).

### *Section 94 – Meaning of "ancillary offence"*

251. This section defines "ancillary offence" for the purposes of this Act. There are references to ancillary offences in the lists of offences to which the provisions on post-charge questioning, aggravated sentencing, forfeiture and notification apply.

### *Section 95 – Meaning of "service court" and "service offence"*

252. This section defines what is meant by "service court" and "service offence", both by reference to relevant provisions in the Armed Forces Act 2006 (which have not yet been commenced) and by reference to relevant provisions in the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (which will be repealed when the relevant provisions of the Armed Forces Act 2006 come into force). "Service court" and "service offence" are referred to in sections 32 and 59 or and Schedule 6 to this Act.

## Orders and regulations

### *Section 96 – Orders and regulations*

253. This section provides that orders and regulations under the Act must be made by statutory instrument but that orders and regulations are interchangeable. It also makes general provision which allows such subordinate legislation to make different provision for different cases or circumstances and to include supplementary, incidental, consequential, transitional and saving provisions.

### *Section 97 – Orders and regulations: affirmative and negative resolution procedure*

254. This section describes what is meant by the affirmative and negative resolution procedures. It also allows statutory instruments made under the Act to be subject to a Parliamentary procedure offering a higher level of scrutiny than that provided for in the Act.

## Financial provisions

### *Section 98 - Financial provisions*

255. This is a standard section relating to money to be paid out and received as a result of provisions of the Act.

## Final provisions

### *Section 100 – Commencement*

256. This section makes specific provision as to when various provisions in the Act are to come into force and provides that other provisions are to be commenced by order (which may also make transitional and saving provisions).

### *Section 101 – Extent*

257. This section provides that the provisions of this Act extend to the whole of the UK except as provided otherwise in the sections of the Act, and that the extent of amendments or repeals to existing legislation correspond to the extent of that existing legislation.