

**EXPLANATORY MEMORANDUM TO
THE TERRORISM ACT 2006 (DISAPPLICATION OF SECTION 25)
ORDER 2010
2010 No. [DRAFT]**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of this Order is to make the maximum period of pre-charge detention for terrorist suspects remain at 28 days for a period of six months from 25th July 2010.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Section 23 of the Terrorism Act 2006 increased the maximum period of pre-charge detention for terrorist suspects under Schedule 8 to the Terrorism Act 2000 from 14 days to 28 days. The commitment to have this extension of pre-charge detention subject to annual renewal was made during Parliamentary debates on what became the Terrorism Act 2006 and can be found in Lords Hansard, 13 December 2005, column 1216. This resulted in section 25 of the 2006 Act, which modifies Schedule 8 to the Terrorism Act 2000 to reduce the maximum period of detention under that Schedule from 28 days to 14 days.
 - 4.2 This Order disapplies section 25 of the Terrorism Act 2006 for a period of six months beginning with 25th July 2010. Without this Order the modifications in section 25 of that Act would take effect because section 25(1) provides that section 25 is to apply to any time which is more than one year after the commencement of section 23 and is not disapplied by order under section 25(2). Section 23 was commenced on 25th July 2006 by S.I. 2006/1936.
 - 4.3 The maximum period of pre-charge detention under Schedule 8 to the Terrorism Act 2000 has remained at 28 days since July 2006. An order was made under section 25(2) which came into force on 25th July 2007 (S.I. 2181). Subsequent orders that were made under that section came into force on 25th July 2008 (S.I. 2008/1745) and on 25th July 2009 (S.I. 2009/1883). Those orders also disapplied section 25 of the 2006 Act for a period of one year.
 - 4.4 As a result of this instrument, the modifications in section 25 will now take effect on 25th January 2011, unless a further Order is made.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 The Secretary of State, Theresa May, has made the following statement regarding Human Rights:

“In my view the provisions of the Terrorism Act 2006 (Disapplication of Section 25) Order 2010 are compatible with the Convention rights”.

7. Policy background

• *What is being done and why*

7.1 Section 23 of the Terrorism Act 2006 amended Schedule 8 to the Terrorism Act 2000 to increase the maximum period of detention without charge of terrorist suspects from 14 days to 28 days as a result of the:

- Greater use of encrypted computers;
- Increasingly complex nature of terrorist networks;
- Increasingly international nature of terrorist networks meaning greater language difficulties and greater need to gather evidence from abroad;
- Difficulty of entering premises to search for evidence where it is suspected that chemical, biological, radiological or nuclear material may be present; and
- Need to intervene early in some terrorist investigations due to the public safety consequences of a successful terrorist attack. This means that suspects may have to be arrested earlier in an investigation than for other crimes and that there may be less opportunity to gather admissible evidence prior to the arrest.

7.2 All of the above factors remain relevant. The current threat level remains at Severe, meaning an attack is considered to be highly likely. Both the police and the Director of Public Prosecutions (DPP) consider that the ability to detain a terrorist suspect for up to 28 days for the purpose of obtaining sufficient evidence to charge remains necessary. From the time the power to detain terrorist suspects for up to 28 days came into force in July 2006, 6 people have been held for between 27 and 28 days, 3 of whom were charged.

7.3 Taking all these factors into consideration, the current maximum period of pre-charge detention of 28 days is still considered necessary. While previous orders renewing the maximum detention limit of 28 days have been for 12 months, the Government is committed to urgently reviewing counter-terrorist legislation, measures and programmes, including pre-charge detention. This commitment is set out in the Coalition Agreement. This order is therefore for a shorter period of six months, while the legislation relating to pre-charge detention is subject to that review.

8. Consultation outcome

8.1 There is no requirement to consult on this instrument.

9. Guidance

9.1 No guidance is required as the Order does not change the law but rather continues to disapply section 25 of the Terrorism Act 2006 for a period of six months.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is likely to be negligible, although there will be some impact on the work of police, prisons and CPS.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 An Order made under section 25(2) of the Terrorism Act 2006 may only apply for a period of up to one year so fresh consideration has to date been given annually to the need for the maximum period of pre-charge detention for terrorist suspects to remain at 28 days as opposed to 14. As this Order only has effect for 6 months, there would be fresh consideration at the end of that period if any renewal order were to be laid. In addition, the maximum limit for pre-charge detention for terrorist suspects and the law relating to such pre-charge detention more generally will be considered as part of the urgent review of counter-terrorism provisions, which was committed to in the Coalition Agreement.

12.2 In accordance with section 36 of the Terrorism Act 2006, an independent reviewer of terrorism legislation (currently Lord Carlile of Berriew Q.C.) reviews the operation of the provisions of Part 1 of that Act and the provisions of the Terrorism Act 2000 – including Schedule 8 to the 2000 Act (pre-charge detention of terrorist suspects) and section 25 of the 2006 Act (renewal of 28 days). His review and findings are published as a command paper on an annual basis.

13. Contact

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