

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Notification Requirements

Supplementary provisions

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.