

EXPLANATORY MEMORANDUM TO
THE TERRORISM ACT 2000 (ENFORCEMENT IN DIFFERENT PARTS OF THE
UNITED KINGDOM) ORDER 2018

2018 No. 521

1. Introduction

- 1.1 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 instrument makes court orders inter-operable, in the three legal jurisdictions in the UK, in relation to investigating terrorist financing. This means that orders granted in one part of the UK can be enforced in another part.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 4 of, and Schedules 5-6A to the Terrorism Act 2000 (TACT) set out provisions relating to terrorist investigations, including the information and evidence gathering powers that are available in respect of terrorist investigations. This instrument ensures that orders issued by courts under these information and evidence gathering powers may be recognised and enforced in different jurisdictions of the UK. For example, relevant orders made by an English court may be recognised in Scotland.

- 4.2 The instrument is made under section 120C TACT, which was introduced by the Criminal Finances Act 2017 (the “CFA”) and provides a power for cross-border recognition and enforcement of TACT investigatory orders relating to terrorism financing. Part 2 of the instrument makes provision for orders made or issued in Northern Ireland or Scotland for the purposes of a terrorist investigation to be enforced in England and Wales. Specifically, the provisions relate to:

- account monitoring orders made under paragraph 2 of Schedule 6A to TACT (articles 3 and 4);
- disclosure orders made under paragraphs 9 or 19 of Schedule 5A to TACT (articles 5 and 6);
- explanation orders made under paragraph 13(1)(b) or 30(1)(b) of Schedule 5 to TACT (articles 7 and 8);
- financial information orders made under paragraph 1 of Schedule 6 to TACT (articles 9 and 10),

- further information orders made under section 22B of TACT (articles 11 and 12); and
- production orders made under paragraph 5 or 22 of Schedule 5 to TACT (articles 13 and 14).

4.3 Equivalent provision is made in Part 3 for orders made or issued in England and Wales or Scotland to be enforced in Northern Ireland, and Part 4 for orders made or issued in England and Wales or Northern Ireland to be enforced in Scotland.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

5.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 TACT is designed to facilitate the investigation, disruption and prosecution of terrorism. To that end TACT provides for a number of court-ordered investigative powers: including disclosure orders, production orders, account monitoring orders, explanation orders, further information orders and financial information orders.

7.2 This instrument enables such orders, when made for the purposes of, or in connection with, the investigation of terrorist financing, to be made in one part of the UK (e.g. England and Wales, Scotland or Northern Ireland) and enforced in another part. Those pursuing investigations in one jurisdiction of the UK will be able to easily obtain information or evidence from another UK jurisdiction by means of a court order obtained in the investigator's own jurisdiction. This removes potential inefficiencies that would arise were an order made in one jurisdiction to require the endorsement of the court in another.

7.3 These provisions bring the application of the terrorism investigation powers in TACT in line with the equivalent criminal investigation powers in the Proceeds of Crime Act 2002 (POCA). Several of these powers in TACT were introduced by the CFA and it is necessary to ensure they can be used appropriately across the United Kingdom.

Consolidation

7.4 No consolidation is required.

8. Consultation outcome

8.1 This instrument makes provision relating to intra-UK cooperation on pre-existing domestic powers in TACT. As the provisions are technical, no public consultation has therefore been carried out. The Northern Ireland Office and the Office of the Attorney General in Scotland were consulted on the drafting of this instrument.

9. Guidance

- 9.1 Guidance already exists around the application for, and effect of, various terrorism investigation orders, in the form of circulars. Circulars may be accessed at <https://www.gov.uk/government/collections/criminal-finances-act-2017>. Separate guidance will not be required for the measures contained in this SI, beyond the need to make the law enforcement agencies aware that terrorism investigation orders from one part of the UK are able to be enforced in all parts.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is negligible.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. However small businesses will only be subject to the same requirements and liabilities that they already are under the operation of the domestic powers under TACT; the instrument does not impose any new requirements or liabilities. Therefore the impact on small businesses is negligible.

12. Monitoring & review

- 12.1 The Office for Security and Counter-Terrorism will monitor the use and impact of this instrument, keeping the instrument under review.

13. Contact

- 13.1 The CT Pursue Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, telephone: 020 7035 4848.