

# COUNTER-TERRORISM AND SECURITY ACT 2015

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## EXPLANATORY NOTES

### **PART 1: TEMPORARY RESTRICTIONS ON TRAVEL**

#### *Summary and Background*

17. *Part 1* introduces two new powers to place temporary restrictions on travel.

#### *Commentary on Sections*

#### *Chapter 1: Powers to seize travel documents*

#### *Section 1: Seizure of passports etc from persons suspected of involvement in terrorism*

18. *Section 1(1)* introduces Schedule 1. This makes provision for the seizure and temporary retention of travel documents where there are reasonable grounds to suspect that a person at a port has the intention of leaving Great Britain or the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom.
19. *Section 1(2) and (3)* provide that civil legal aid may be made available for hearings of applications, under *paragraph 8* of Schedule 1, to extend the 14 day time period in which an individual's travel documents may be retained in England and Wales and in Northern Ireland respectively. Civil legal aid is available in Scotland under the Legal Aid (Scotland) Act 1986.

#### *Schedule 1: Seizure of passports etc from persons suspected of involvement in terrorism*

20. *Paragraph 1* sets out the interpretation of key terms in the Schedule.
21. *Paragraph 2(1)* provides that the search and seizure powers may be used where a constable has reasonable grounds to suspect that a person at a port in Great Britain intends to leave Great Britain to become involved in terrorism-related activity outside the UK. The same powers apply where a constable has reasonable grounds to suspect that a person at a port or in the border area in Northern Ireland intends to leave the UK for that purpose (*paragraph 2(2)*). This means that the power may be exercised where a person travels within the UK from Great Britain to Northern Ireland for the purpose of involvement in terrorism outside the UK but not where the person is travelling from Northern Ireland to Great Britain. This is so that the power is exercisable against persons who intend to leave the UK by crossing the open land border with the Republic of Ireland. The constable may exercise the search and seizure powers himself or herself, or direct that a qualified immigration officer or customs official does (*paragraph 2(3)*). A qualified officer or official is one who is designated by the Secretary of State for the purposes of this Schedule (*paragraph 1(4)*), and will have received training in the exercise of these powers. A person who is required to hand over travel documents or

who is searched under these powers must be informed of the constable's suspicion (*paragraph 2(8)*). If an immigration officer or customs official already holds the travel document (for example as a result of a routine passport check), then that officer or official may ask a constable for a direction that the travel document should be handed to the constable, and can retain it while waiting for an answer. If the constable gives such a direction, the documents must be handed over to a constable as soon as possible (*paragraph 2(9) and paragraph 3*). Travel document includes a passport and a ticket for travel from a place in Great Britain to a place outside Great Britain or from Northern Ireland to a place outside the UK (*paragraph 1(6)*).

22. *Paragraph 4* provides that where a constable (or on the constable's direction, an immigration officer or customs official) is holding travel documents under these powers, the constable must seek authorisation for the documents' retention from a senior police officer as soon as possible. The senior officer must be of a least the rank of superintendent (*paragraph 1(5)*). The senior officer may grant the authorisation if satisfied that there are reasonable grounds for the suspicion that the person intends to leave GB or the UK in order to become involved in terrorism-related activity outside the UK. If authorisation is not granted, the documents must be returned as soon as possible, unless they can be retained under any other power (for example a power under immigration legislation) (*paragraph 4(6) and (9)*). A person whose travel document is retained under these powers must be informed of the constable's suspicion, unless it is anticipated that the application for authorisation will be dealt with immediately so that the period during which the document is withheld may be very short (*paragraph 4(3) and (4)*).
23. *Paragraph 5* makes provision for the retention or return of seized documents. *Paragraph 5(1)* specifies the circumstances in which a travel document may continue to be retained. These are while:
  - a) the Secretary of State considers whether to cancel the person's passport;
  - b) consideration is given as to whether or not to charge the person with an offence;
  - c) consideration is given to making the person subject to an order or measure connected with protecting the public from a risk of terrorism; or
  - d) steps are being taken to carry out any of the above.
24. A travel document may not be retained beyond 14 days beginning with the day after the day the document was seized, unless that period is extended by a judicial authority (*paragraph 5(2)*). Documents must be returned to a person as soon as possible where none of the above reasons for retaining them continue to apply or where the 14 day period has expired, unless they can be lawfully retained under another power or provision not in Schedule 1 or detained for criminal or deportation proceedings under *paragraph 7 (paragraph 5(3))*. *Paragraph 5(4)* provides that the constable in possession of a person's travel document must explain to him or her the grounds on which the document can be retained. There will be a statutory Code of Practice which will provide further detail about the information that must be provided to those stopped or whose documents are retained.
25. *Paragraph 6* provides that when authorisation has been given to retain travel documents and the documents are still being retained at the end of 72 hours (beginning from the time when the travel documents were first taken from the person) a police officer of at least the rank of chief superintendent, and at least as high a rank as the senior police officer who authorised the retention of the travel documents, must carry out a review of whether the decision to authorise retention of the travel documents was flawed (*paragraph 6 (1) to(2)*). The review must begin within the 72 hour period and be completed as soon as possible. The findings of the review must be communicated to the relevant chief constable (*paragraph 6(3)*). The chief constable must consider those findings and take any action considered appropriate (*paragraph 6(4)*). If the power to

search for or seize documents under *paragraph 2* was exercised by an accredited officer (as described at *paragraph 17(1)*) the findings of the review must also be communicated to the Secretary of State (*paragraph 6(5)*).

26. *Paragraph 7* provides for the detention of travel documents for certain proceedings. A constable or qualified officer may detain the document while the constable or officer believes that it may be needed for evidence in criminal proceedings or in connection with a decision whether to make a deportation order (*paragraph 7(2)*).
27. *Paragraph 8* provides that the police may apply to a judicial authority to extend the retention period of travel documents beyond 14 days. A senior police officer of at least the rank of superintendent may, prior to the end of the 14 day retention period, apply for an extension (*paragraph 8(1) and (2)*). An application may only be heard if reasonable efforts have been made to notify the person of the time and place the application will be heard (*paragraph 8(3)*). The judicial authority must grant the application if it is satisfied that those involved in considering whether the further action should be taken in relation to the person have been acting diligently and expeditiously. Otherwise, the application must be refused. An extension must be for a period ending no later than 30 days from the day after the passport was seized (*paragraph 8(6) and (7)*).
28. *Paragraph 9* provides that the person to whom the application relates must be given an opportunity to make oral or written representations about the application and is entitled to legal representation at the hearing (*paragraph 9(1) and (2)*). Where a person is entitled to be legally represented, is not represented and wishes to be represented, the judicial authority must adjourn the hearing to enable the person to obtain legal representation (*paragraph 9(2)*). The judicial authority may exclude the person to whom the application relates and anyone representing that person from any part of the hearing (*paragraph 9(3)*). The judicial authority may find this necessary if, for example, specified information upon which the police intend to rely is to be withheld from the person whose travel documents are being retained and their representative.
29. The police officer applying for an extension of the 14 day retention period may also apply to the judicial authority for an order that specified information upon which he or she intends to rely be withheld from the person whose travel documents are being retained and their representative (*paragraph 10(1)*). *Paragraph 10(2)* sets out the grounds on which the authority may agree that information can be withheld. The judicial authority must exclude from the hearing the person whose travel documents have been retained and their legal representatives (*paragraph 10(3)*).
30. *Paragraph 11(1)* provides that the judicial authority may adjourn the hearing of an application under *paragraph 8* only if the hearing is adjourned to a date before the expiry of the 14 day period unless the adjournment is to enable the person to obtain legal representation, in which case the adjournment must be to a date before the expiry of the 30 day period (*paragraph 11(2)*). If the application is adjourned to a date beyond the 14 day period the judicial authority must extend the retention period until that date (*paragraph 11(3)*).
31. Where a judicial authority makes an order which permits the travel document to be retained for a period which extends beyond the initial 14 day period but which expires before the end of 30 days from the day after the documents were first taken, a police officer may make one further application for an extension to retain the travel documents (*paragraph 12(1)*).
32. *Paragraph 13* restricts repeated use of the power against the same individual. Where a power to retain a document is exercised against a person under this Schedule and any of the powers available under this Schedule have already been exercised in relation to the same person on two or more occasions in the preceding six months, then the travel documents may be retained only for a period of 5 days (*paragraph 13(1) and (2)*). The senior police officer may apply for an extension of this 5 day period up to a maximum of 30 days, but in these circumstances the application will only be granted if

the judicial authority thinks that there are exceptional circumstances which justify the further use of these powers in relation to the same person as well as being satisfied that the investigations about further action are being carried out diligently and expeditiously.

33. *Paragraph 14* applies where a person's travel documents are retained with the result that the person is unable to leave the United Kingdom during the period of the retention. The Secretary of State may make whatever arrangements are considered appropriate during the period of retention of a person's travel documents and on that period of retention coming to an end (*paragraph 14(2)*). For example, the Secretary of State could use this power to provide accommodation and food. If the person requires leave to lawfully enter or remain in the UK but has none at any point during the period of retention, their presence in the United Kingdom will not be unlawful under the Immigration Act 1971 during the period of retention of documents (*paragraph 14(3)*).
34. *Paragraphs 15(1) and (2)* create two offences in relation to the operation of the new powers. These are respectively the offence of failing to hand over travel documents without reasonable excuse, and intentionally obstructing or seeking to frustrate a search. Both are summary offences with maximum penalties of six months' imprisonment or a fine (which in Scotland and Northern Ireland may not exceed level 5 on the standard scale), or both (*paragraph 15(3)*).
35. *Paragraph 17* provides that the Secretary of State may designate a qualified immigration officer or customs official as an "accredited" immigration officer or customs official. These will be officers or officials who have had further training in the exercise of the Schedule 1 powers. An accredited immigration officer or customs official will have the same powers as a constable to search for and seize travel documents. The accredited officer or official may retain any travel documents taken, while he or she seeks authorisation for their retention from a senior police officer. If authorisation is given, the documents must be handed over to a constable.
36. *Paragraphs 18 to 20* place the Secretary of State under a duty to issue a code of practice with regard to the functions under this Schedule. The paragraphs provide that the Secretary of State may comply with the obligations to publish a draft of the code of practice, consider representations on the code, make any modifications and lay the draft code before Parliament before the Act receives Royal Assent. The code of practice will be first issued using the "made affirmative" procedure because, given the urgency of the need to disrupt travel, the temporary passport seizure power comes into force on the day after Royal Assent and the code of practice needs to be in operation simultaneously.

## ***Chapter 2: Temporary exclusion from the United Kingdom***

### ***Section 2: Temporary exclusion orders***

37. *Subsection (1)* provides for the creation of a "temporary exclusion order" (TEO), which requires the individual on whom it is imposed not to return to the United Kingdom unless their return is in accordance with a permit to return issued by the Secretary of State before the individual began the return, or the return is the result of the individual's deportation to the United Kingdom.
38. *Subsection (2)* provides that the Secretary of State may impose a TEO only where five conditions have been met. *Subsections (3) to (7)* outline those conditions. The Secretary of State must reasonably suspect that the individual is, or has been, involved in terrorism-related activity outside the United Kingdom and must reasonably consider that it is necessary to impose a TEO for purposes connected with protecting the public in the UK from a risk of terrorism. While the TEO is in place, the Secretary of State must keep under review whether the second of these conditions is met.
39. Additionally, the Secretary of State must reasonably consider that the individual is outside the UK when the order is imposed and the individual must have the right of

abode in the UK. *Section 2(1)* of the Immigration Act 1971 provides that British citizens and certain Commonwealth citizens have the right of abode in the UK.

40. The Secretary of State may impose a TEO only if the court has given prior permission or if he or she reasonably considers that the urgency of the case requires an order to be imposed without obtaining such permission.

### ***Section 3: Temporary exclusion orders: prior permission of the court***

41. This section makes provision for the role of the court in providing prior permission to the Secretary of State to impose a TEO. It details the function of the court, allows the court to consider the application even if the person is not aware of the proposal to impose a TEO on him or her, and requires the court to apply judicial review principles in determining it. It also introduces Schedule 2.

### ***Schedule 2: Urgent temporary exclusion orders: reference to the court etc***

42. This Schedule requires the Secretary of State to refer an urgent TEO to court after imposing it. The Schedule requires the court to apply judicial review principles and gives the court power to quash an urgent TEO.

### ***Section 4: Temporary exclusion orders: supplementary provision***

43. *Subsections (1) and (2)* provide for giving notice of a TEO to the person on whom it has been imposed. There is a duty on the Secretary of State to give notice; including an explanation of how the individual can apply for a permit to return (more detail on permits to return is given in section 5).
44. *Subsection (3)* outlines that an order only comes into force when notice of its imposition has been given and remains in force for a period of two years, unless it is revoked or otherwise brought to an end earlier.
45. *Subsections (4) to (6)* outline how revocation of an order will operate. It provides for the Secretary of State to revoke a TEO at any time and states notice of this must be given to the individual, at which point the order will cease to be in force.
46. *Subsection (7)* makes clear that a TEO remains valid even where an individual has returned to the UK. This is because the order may place some obligations on the individual once they have returned to the country (section 9 provides more detail on this).
47. *Subsection (8)* allows for a TEO to be imposed even where one has been imposed previously. This covers a situation where the TEO may have expired or been revoked, but the Secretary of State later considers that the relevant conditions are met.
48. *Subsections (9) to (11)* provide that any British passport held by the individual subject to a TEO is invalidated as soon as the order comes into force, and any passport issued while the TEO remains in force and the individual is outside the United Kingdom is invalid. These provisions only apply in respect of a “British passport” as defined in *subsection (11)*.

### ***Section 5: Permit to return***

49. *Subsections (1) to (3)* specify that an individual subject to a TEO may be given a permit to return which gives them permission to return to the UK. The document may include conditions that the individual is required to comply with in order for the document to be valid.
50. *Subsections (4) to (6)* specify that a permit to return must state the time at which, or period of time during which, the individual is permitted to arrive on return to the United

Kingdom. It must also state the manner in which the person is permitted to return, and the place where the individual is permitted to arrive.

51. *Subsections (7) to (8)* specify that the Secretary of State can only issue a permit to return in accordance with section 6 or 7 and that it is for the Secretary of State to decide the terms of a permit to return, subject to section 6(3).

### ***Section 6: Issue of permit to return: application by individual***

52. *Subsections (1) to (4)* make clear that there is a duty on the Secretary of State to issue a permit to return to the subject of a TEO within a reasonable period, if the subject applies for one. It also provides that the return time specified in the permit must be within a reasonable period after the application is made. The Secretary of State may refuse to issue a permit to return if the Secretary of State has required the individual to attend an interview and the individual has failed to do so. An application is only valid if it has been made following the right procedure.
53. *Subsection (5)* outlines the definitions of “application” and “relevant return time” in this section.

### ***Section 7: Issue of permit to return: deportation or urgent situation***

54. *Subsection (1)* provides that the Secretary of State must issue a travel document if the individual is being deported by another country to the UK, whether or not a request has been made by the individual.
55. *Subsection (2)* provides that the Secretary of State may issue a permit to return to an individual if the Secretary of State considers that, because of the urgency of the situation, it is expedient to do so even though no application has been made for one and the Secretary of State does not consider that the individual is to be deported to the United Kingdom.

### ***Section 8: Permit to return: supplementary provision***

56. *Subsection (1)* allows for the Secretary of State to vary a permit to return.
57. *Subsection (2)* provides the conditions under which the Secretary of State may revoke a permit to return.
58. *Subsection (3)* provides that an application for a permit to return under section 6 does not prevent a subsequent application from being made.
59. *Subsection (4)* provides that the issuing of a permit to return does not prevent a subsequent permit to return from being issued.

### ***Section 9: Obligations after return to the United Kingdom***

60. *Subsection (1)* allows for the Secretary of State to impose obligations on an individual subject to a TEO when they have returned to the UK. The obligations which the Secretary of State may impose on the individual are outlined at *subsection (2)*. These include obligations to report to a police station and attendance at appointments, under paragraph 10 or 10A of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 (that paragraph 10A is inserted by section 19 of this Act). Attendance at appointments may include de-radicalisation programmes amongst other meetings. The individual may also be required to notify the police of their place of residence and any change of address.
61. *Subsection (4)* provides that the Secretary of State may vary or revoke any notice given under this section and *subsection (5)* provides that variation or revocation comes into effect when notice is given to the individual.

62. *Subsection (6)* provides that the validity of a notice under this section is not affected by travel out of or into the UK and *subsection (7)* provides that the giving of notice under this section does not prevent any further notice being given to the individual.

### ***Section 10: Offences***

63. *Subsection (1)* provides that it is an offence for an individual subject to a TEO to return to the United Kingdom in contravention of the TEO, without a reasonable excuse.
64. *Subsection (2)* provides that it is irrelevant for the purposes of this offence whether or not the individual has a passport or similar other identity document.
65. *Subsection (3)* makes it an offence for an individual subject to a TEO not to comply without a reasonable excuse with obligations imposed by the Secretary of State under section 9.
66. *Subsection (4)* provides that deemed service of notice (where the relevant notice has not actually been given to an individual) does not prevent an individual from showing that lack of knowledge of the TEO, or of the obligation imposed under section 9, was a reasonable excuse for the purposes of this section.
67. *Subsection (5)* sets out the maximum penalties for conviction of an individual for the two new offences.
68. Definitions of the terms “relevant notice” and “restriction on return” are provided at *subsection (7)*.
69. *Subsection (8)* amends subsection (1A) of section 2 of the UK Borders Act 2007 to replace “the individual is subject to a warrant for arrest” with “the individual (a) may be liable to detention by a constable under section 14 of the Criminal Procedure (Scotland) Act 1995 in respect of an offence under section 10(1) of the Counter-Terrorism and Security Act 2015 or (b) is subject to a warrant for arrest”. This means that designated immigration officers in Scotland will have the power to detain any person they think is liable to arrest for the offence of returning to the UK in breach of a TEO. Equivalent provision exists in England, Wales and Northern Ireland.

### ***Section 11: Review of decisions relating to temporary exclusion orders***

70. This section makes provision for an individual subject to a TEO to be able to apply to the court for a statutory review of the decision to impose a TEO, and any associated in-country measures, once the individual is back in the United Kingdom. It details which decisions the individual may apply to have reviewed, the principles the court must apply in reviewing the decisions, and the powers it has on review.

### ***Section 12: Temporary exclusion orders: proceedings and appeals against convictions***

71. This section introduces Schedule 3 and Schedule 4.

### ***Schedule 3: Temporary exclusion orders: proceedings***

72. This Schedule details the provisions that can be made by rules of court in relation to temporary exclusion order proceedings, and the provisions that must be made in relation to disclosure. *Paragraphs 8 and 9* provide for the use of advisers appointed by the Lord Chancellor in any Temporary Exclusion Order proceedings or appeal proceedings. *Paragraph 10* provides that a special advocate may be appointed to represent the interests of the party if the party and any legal representatives of the party are excluded from the proceedings.

***Schedule 4: Temporary exclusion orders: appeals against convictions***

73. This Schedule details the appeal proceedings available to an individual where a TEO or associated in-country measure under it is quashed or altered and the individual has already been convicted of an offence under section 10(1) or (3) in connection with the TEO or measure.

***Section 13: Regulations: giving of notices, legislation relating to passports***

74. *Subsections (1) and (2)* provide that the Secretary of State may, by regulations, make provision about the giving of notice under sections 4 and 9. Such regulations may make provision about cases in which notice is deemed to have been given.
75. *Subsection (3)* provides that the Secretary of State may make regulations providing for legislation relating to passports or other identity documents to apply (with or without modifications) to permits to return. Given the close parallels between passports and permits to return, as documents confirming the holder's identity and confirming the holder's right to return to the UK, it is appropriate that the Secretary of State has such a power, to enable consistency of treatment between them.
76. *Subsections (4) to (5)* provides that regulations made under this section are subject to the negative resolution procedure.

***Section 14: Chapter 2: interpretation***

77. *Subsection (2)* provides definitions for terms set out in Chapter 2 of Part 1.
78. *Subsection (3)* makes provision in respect of when an individual is subject to a TEO and when an individual is subject to obligations imposed under section 9.
79. *Subsections (4) to (5)* define "terrorism-related activity" for the terms of the imposition of a TEO and provide that an individual's involvement in such activity can have occurred before or after the coming into force of section 2.
80. *Subsections (6) and (7)* make provision in respect of the terms "return to the United Kingdom" and "deportation".

***Section 15: Chapter 2: consequential amendments***

81. This section makes amendments to the Senior Courts Act 1981, the Criminal Justice Act 1988 and the Regulation of Investigatory Powers Act 2000. These amendments are designed to ensure that the court's role in relation to a temporary exclusion order can be effective.