

*These notes refer to the Terrorism Act 2000 (c.11)  
which received Royal Assent on 20th July 2000*

# **TERRORISM ACT 2000**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Terrorism Act 2000, which received Royal Assent on 20 July 2000. They have been prepared by the Home Office and the Northern Ireland Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment none is given.

### **SUMMARY**

3. The Act reforms and extends previous counter-terrorist legislation, and puts it largely on a permanent basis. The previous legislation concerned is:
  - the [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4\)](#) (“the PTA”);
  - the [Northern Ireland \(Emergency Provisions\) Act 1996 \(c. 22\)](#) (“the EPA”); and
  - sections 1 to 4 of the [Criminal Justice \(Terrorism and Conspiracy\) Act 1998 \(c. 40\)](#).
4. The Act builds on the proposals in the Government’s consultation document *Legislation against terrorism* (Cm 4178), published in December 1998. The consultation document in turn responded to Lord Lloyd of Berwick’s *Inquiry into legislation against terrorism* (Cm 3420), published in October 1996.
5. Previous counter-terrorist legislation provided a range of measures designed to prevent terrorism and support the investigation of terrorist crime. These fall into three broad categories: a power for the Secretary of State to proscribe terrorist organisations, backed up by a series of offences connected with such organisations (membership, fundraising etc); other specific offences connected with terrorism (such as fund-raising for terrorist purposes, training in the use of firearms for terrorist purposes, etc); and a range of police powers (powers of investigation, arrest, stop and search, detention, etc).
6. The Act repeals the PTA and re-enacts those of its provisions which remain necessary, with a number of modifications. The previous counter-terrorist legislation was subject to annual renewal by Parliament. Under the Act this will in general no longer be the case. The main provisions in the Act are to be permanent. There will, however, continue to be an annual report to Parliament on the working of the Act; this is required under section 126.
7. The EPA would have repealed itself on 24 August 2000. The consultation document expressed the Government’s hope that the special provision it makes for Northern Ireland might not be needed after that date, an objective to be kept under review in the light of developments in the security situation. The Government takes the view that the time is not yet right to remove all of these provisions. Part VII of the Act therefore

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provides additional temporary measures for Northern Ireland only. These are subject to annual renewal and are time-limited to 5 years.

8. The previous counter-terrorist legislation was originally designed in response to terrorism connected with the affairs of Northern Ireland (“Irish terrorism”), and some of its provisions had subsequently been extended to certain categories of international terrorism. It did not apply to any other terrorism connected with UK affairs (“domestic terrorism”). Under the Act these restrictions have been lifted, so that counter-terrorist measures are to be applicable to all forms of terrorism: Irish, international, and domestic.

## **OVERVIEW**

9. The Act’s Parts and Schedules are as follows.
  - Part I (Introductory) sets out the definition of terrorism for the purposes of the Act, repeals the PTA and, with Schedule 1, deals with the continuation of certain temporary provisions of the EPA until Part VII of the Act is brought into force.
  - Part II (Proscribed organisations) provides a power for the Secretary of State to proscribe organisations and sets out the associated offences. Schedule 2 lists the organisations which are currently proscribed and Schedule 3 details the functions of the Proscribed Organisations Appeal Commission (POAC) which the Act sets up.
  - Part III (Terrorist property) provides offences relating to fund-raising and other kinds of financial support for terrorism, together with power for a court to order forfeiture of any money or other property connected with the offences. Schedule 4 gives details of forfeiture procedures.
  - Part IV (Terrorist investigations) provides the police with a power to set up cordons. Schedule 5 sets out further powers to investigate terrorism by searching premises and seeking explanation of items found; and Schedule 6 provides a power to investigate terrorist finance based on an existing Northern Ireland power to investigate proceeds of crime.
  - Part V (Counter-terrorist powers) provides the police with powers to arrest and detain suspected terrorists, and broader powers to stop and search vehicles and pedestrians, and to impose parking restrictions. Schedule 7 provides examination powers at ports and borders; and Schedule 8 provides for the treatment of suspects who are detained and for judicial extension of the initial period of detention.
  - Part VI (Miscellaneous) provides ancillary offences of
    - weapons training for terrorist purposes, including recruitment for such training,
    - directing a terrorist organisation,
    - possessing articles for terrorist purposes,
    - possessing information for terrorist purposes, and
    - incitement of overseas terrorism.

Part VI also includes provisions on extraterritorial jurisdiction and extradition which will enable the UK to ratify the UN Conventions for the Suppression of Terrorist Bombings and for the Suppression of the Financing of Terrorism.

- Part VII (Northern Ireland) provides for the system of non-jury trials in Northern Ireland for the offences listed in Schedule 9. Together with Schedules 10–13, this Part also provides additional police and Army powers for Northern Ireland, and regulates the private security industry in Northern Ireland.

- Part VIII (General) contains further technical provisions and includes a list of terms defined in the Act. Schedule 14 provides general powers for police, customs and immigration officers including powers for them to exchange information. Schedules 15 and 16 list consequential amendments and repeals.

## **COMMENTARY**

### **Part I: Introductory**

#### ***Section 1: Terrorism: interpretation***

10. Under the PTA, terrorism “means the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear” (section 20). The definition in the PTA is limited in that the powers and offences in that Act only apply to terrorism connected with the affairs of Northern Ireland (“Irish terrorism”) or Irish and international terrorism. The Act, as suggested in the consultation document, adopts a wider definition, recognising that terrorism may have religious or ideological as well as political motivation, and covering actions which might not be violent in themselves but which can, in a modern society, have a devastating impact. These could include interfering with the supply of water or power where life, health or safety may be put at risk. *Subsection (2)(e)* covers the disrupting of key computer systems. *Subsection (3)* provides that where action involves firearms or explosives, it does not have to be designed to influence the government or to intimidate the public or a section of the public to be included in the definition. This is to ensure that, for instance, the assassination of key individuals is covered.
11. *Subsection (4)* provides for the definition to cover terrorism not only within the United Kingdom but throughout the world. This is implicit in the PTA definition but the Act makes it explicit.

#### ***Section 2: Temporary legislation***

12. *Subsection (1)* repeals the PTA and EPA. *Subsection (2)*, together with Schedule 1, preserves certain provisions of the EPA, in some cases with amendment, until the date on which Part VII (Northern Ireland) of the Act is brought into force: see further notes on Schedule 1 below.

### **Part II: Proscribed Organisations**

13. Part II is based on Part I of the PTA (which has effect in Great Britain only) and on sections 30–31 of the EPA (which have effect in Northern Ireland only). The proscription regime under the Act differs from those it replaces as follows:
  - The PTA and EPA provide separate proscription regimes for Great Britain and Northern Ireland. Under the Act proscription will no longer be specific to Northern Ireland or Great Britain, but will apply throughout the whole of the UK.
  - Under the PTA and EPA proscription is only applicable to organisations concerned in Irish terrorism. Under the Act it will also be possible to proscribe organisations concerned in international or domestic terrorism.
  - Under the PTA and EPA an organisation or an affected individual wishing to challenge a proscription can only do so in the UK via judicial review (no proscribed organisation has ever done this). Under the Act, organisations and individuals will be able to apply to the Secretary of State for deproscription and, if their application is refused, to appeal to the Proscribed Organisations Appeal Commission (“POAC”; see below).

### ***Section 3: Proscription***

14. [Schedule 2](#) lists all organisations proscribed under the PTA and the EPA at the time the Act received Royal Assent. Some organisations were at that point proscribed in Northern Ireland under the EPA but not in Great Britain under the PTA. Under the Act, any organisation deemed to merit proscription will be proscribed throughout the whole of the UK. The Government is considering which organisations involved in international terrorism might be added to the Schedule.
15. The power to proscribe and deproscribe in *subsection (3)*, including deproscription following a successful appeal, will be subject to the affirmative resolution procedure.

### ***Sections 4–6: Deproscription: application and appeals***

16. These sections set out the route by which an organisation which thinks it should not be proscribed, or an affected individual, may seek a remedy. The first step is to ask the Secretary of State to deproscribe; the Secretary of State will be obliged to consider such applications within a period of time specified in regulations to be made under *subsection (3)* of section 4. If the Secretary of State refuses to deproscribe, then the organisation or individual may appeal to POAC as set out in section 5 and Schedule 3.
17. The grounds on which POAC will allow an appeal are set out in *subsection (3)* of section 5. The reference to “the principles applicable on an application for judicial review” allows that once the [Human Rights Act 1998 \(c. 42\)](#) is fully in force, it will be possible for an appellant to raise points concerning those rights under the European Convention on Human Rights which are “Convention rights” under the 1998 Act.
18. *Subsections (4)–(5)* of section 5 deal with the consequences of an appeal to POAC being successful. Where POAC makes an order, this has the effect of requiring the Secretary of State either to lay a draft deproscription order before Parliament or to make a deproscription order on the basis of the urgency procedure (see below).
19. [Section 6](#) allows a further appeal from a decision of POAC on a question of law.

### ***Sections 7–8: Appeal: effect on conviction***

20. If an appeal to POAC is successful, and an order has been made deproscribing the organisation, anyone convicted of one of the offences listed in *subsection (1)(c)* in respect of the organisation, so long as the offence was committed after the date of the refusal to deproscribe, may, in England and Wales, appeal against his conviction to the Court of Appeal or Crown Court, and the Court will allow the appeal. *Subsection (8)* ensures that he can seek compensation for the conviction. Corresponding provision is made for Scotland and Northern Ireland.

### ***Section 9: Human Rights Act 1998***

21. Since it is intended that the Lord Chancellor will make rules under section 7(2) of the Human Rights Act so that proceedings under section 7(1)(a) of that Act may be brought before POAC, this section of the Act applies provisions in the Act relating to appeals to POAC to such proceedings under the Human Rights Act.

### ***Section 10: Immunity***

22. An individual who seeks deproscription by way of application or appeal, either on behalf of the proscribed organisation or as a person affected, might be discouraged from pursuing either course, or from instituting proceedings under section 7 of the Human Rights Act, by the risk of prosecution for certain offences, for example the offence of membership of a proscribed organisation. This section therefore ensures that evidence of anything done, and any document submitted for these proceedings, cannot be relied on in criminal proceedings for such an offence except as part of the defence case.

### ***Sections 11–12: Membership and support***

23. These offences are based on those in section 2 of the PTA and section 30 of the EPA, and have similar effect. The offence in section 12(1) is not confined to support by providing “money or other property”, because that kind of support is dealt with in Part III of the Act. *Subsection (4)* of section 12 is intended to permit the arranging of genuinely benign meetings.

### ***Section 13: Uniform***

24. This section replicates the offence at section 3 of the PTA and section 31 of the EPA. The PTA version, which has effect in England and Wales and in Scotland, is summary only with a maximum custodial penalty of 6 months. The EPA version, which has effect in Northern Ireland is an either way offence with a maximum custodial penalty on indictment of 1 year. In the Act, the offence is summary only, as in the PTA. Thus in consolidating the legislation the Act aligns the situation in Northern Ireland with that in Great Britain.

## **Part III: Terrorist Property**

25. This Part corresponds to Part III of the PTA (“Financial assistance for terrorism”) and was discussed in Chapter 6 of the Government’s consultation document under the heading “Terrorist finance”. The name has been changed to “Terrorist property” to make it clear that in the Act – just as in the PTA – the Part III offences apply not only to money but also to other property. While Part III of the PTA applies only to Irish and certain kinds of international terrorism, Part III of the Act applies to all forms of terrorism.
26. In addition to replicating Part III of the PTA, Part III of the Act also introduces a new power for the police, customs officers and immigration officers to seize cash at borders and to seek forfeiture of the cash in civil proceedings. This is modelled on a power which already exists in Part III of the [Drug Trafficking Act 1994 \(c. 37\)](#).

### ***Section 14: Terrorist property***

27. This definition comes into play in the “money laundering” offence (section 18) and the power to seize and forfeit cash at borders (sections 25 and 28). *Subsection (1)* makes it clear that terrorist property can include both property to be used for terrorism and proceeds of acts of terrorism. *Subsection (2)(a)* makes explicit that the proceeds of an act of terrorism covers not only the money stolen in, say, a terrorist robbery, but also any money paid in connection with the commission of terrorist acts. *Subsection (2)(b)* makes explicit that any resources of a proscribed organisation are covered: not only the resources they use for bomb-making, arms purchase etc but also money they have set aside for non-violent purposes such as paying rent.

### ***Sections 15–17: Fundraising, use, possession and funding arrangements***

28. These sections correspond to sections 9 and 10 of the PTA. By virtue of section 1(5) of the Act the words “for the purposes of terrorism” can be taken to include “for the benefit of a proscribed organisation”. As a result, the offences of fund-raising, and using and possessing money, and entering into funding arrangements for a proscribed organisation (section 10 of the PTA) are subsumed into these sections.

### ***Section 18: Money laundering***

29. This section corresponds to section 11 of the PTA and has the same effect. Although it is entitled “money laundering” and is most likely to be used for money, it also applies to “laundering” type arrangements in respect of other property.

***Section 19: Disclosure of information: duty***

30. This section is based on section 18A of the PTA and has the same effect. It requires banks and other businesses to report any suspicion they may have that someone is laundering terrorist money or committing any of the other terrorist property offences in sections 15–18. *Subsection (1)(b)* ensures the offence is focused on suspicions which arise at work. *Subsection (5)* preserves the exemption in respect of legal advisers' privileged material.
31. Suspicions arising in home life were covered by section 18 of the PTA which the Government has decided, following Lord Lloyd, not to replicate.

***Sections 20–21: Disclosure of information: permission; co-operation with the police***

32. These sections correspond to section 12 of the PTA and have the same effect. Section 20 ensures that businesses can disclose information to the police without fear of breaching legal restrictions. *Subsection (1)* of section 21 allows for the activities of informants who may have to be involved with terrorist property if they are not to be found out and protects others who may innocently become involved. *Subsection (2)* makes it possible for someone involved with such property to avoid prosecution by telling the police as soon as is reasonably practicable (*subsection (3)*) and discontinuing his involvement if asked to do so by the police (*subsection (4)*).

***Sections 22–23: Penalties and forfeiture***

33. **Section 22** corresponds to section 13(1) of the PTA and has the same effect. Section 23 is based on section 13(2) of the PTA and has similar effect subject to one substantive modification. *Subsection (6)* allows for forfeiture of the proceeds of a terrorist property offence. This could arise in a case where an accountant prepared accounts on behalf of a proscribed organisation – thus facilitating the retention or control of the organisation's money – and was paid for doing so. The money he received in payment could not be forfeited under section 13(2) of the PTA because it was not intended or suspected for use in terrorism. It could not be confiscated under the **Criminal Justice Act 1988 (c. 33)** because that confiscation regime excludes terrorist property offences. *Subsection (6)* closes this loophole between the confiscation scheme in the 1988 Act and the counter-terrorist forfeiture scheme.

***Sections 24–31: Seizure, detention and forfeiture of terrorist cash at borders***

34. These sections are based on sections 42–48 of the **Drug Trafficking Act 1994 (c. 37)** which relate to drug trafficking money imported or exported in cash. The main difference (apart from applying the powers to terrorist rather than drug trafficking cash) is that the powers in the Drug Trafficking Act only apply to cash being taken across the UK's external borders, while those in the Act also apply to cash being taken from Northern Ireland to Great Britain and vice versa. As with drug trafficking, no criminal conviction is required.

***Section 24: Interpretation***

35. *Subsection (1)* allows the power to seize cash to be exercised by any of the agencies operating at borders: police, customs and immigration. This is to allow for the event that a customs or immigration officer is the first to find the cash. However, it is expected that for the most part the power will be exercised by the police. The definition of cash in *subsection (2)* is intended to cover the most readily realisable monetary instruments used by terrorists; the order-making power in *subsection (2)(e)* will enable the Secretary of State to add further monetary instruments as the need arises.

***Section 25: Seizure and detention***

36. Once cash has been seized, then under this section it can be detained for up to 48 hours. During that time the authorities must either seek continued detention or forfeiture. If neither of these occurs during the first 48 hours, the cash will be returned.

***Sections 26–27: Continued detention of cash***

37. A magistrate can allow continued detention for up to 3 months under *subsection (2) (b)* of section 26. A further application can be granted after the 3 months has expired, and so on, up to a maximum of two years (*subsection (4)*). In section 27, *subsection (1)* provides for any interest accruing on the cash, and *subsections (2)–(5)* for application to the court for a direction that the cash be released.

***Sections 28–29: Forfeiture and appeal***

38. This section provides for civil forfeiture proceedings in relation to the seized cash. Evidence that the cash is terrorist property is required to the civil standard (*subsection (2)* of section 28); proceedings for a criminal offence are not needed (*subsection (4)*) and the proceedings themselves are civil as opposed to criminal. Appeals must be lodged within 30 days, and the route of appeal is in England and Wales to the Crown Court; in Northern Ireland to the county court; and in Scotland to the Court of Session. A successful appeal will result in the cash being paid back, together with any accrued interest.
39. *Subsections (6)–(7)* provide for the situation where an organisation is deproscribed following a successful appeal to POAC, and a forfeiture order has been made in reliance (in whole or in part) on the fact that the organisation was proscribed. In such cases, the person whose cash has been forfeited may appeal at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force.

**Part IV: Terrorist Investigations**

***Section 32: Terrorist investigation***

40. This definition applies to the power in sections 33–36 to use cordons, to the powers in Schedule 5 to obtain search warrants, production orders and explanation orders; and to the power in Schedule 6 to make financial information orders. There is also an offence in section 39 of “tipping off” in relation to a terrorist investigation.

***Sections 33–36: Cordons***

41. These sections make similar provision to that inserted into the PTA, at section 16C and Schedule 6A, by the [Prevention of Terrorism \(Additional Powers\) Act 1996 \(c. 7\)](#). They give the police the power for a limited period to designate and demarcate a specified area as a cordoned area for the purposes of a terrorist investigation – for instance in the wake of a bomb. They also make it an offence to breach a cordon.

***Section 37: Powers***

42. See notes on Schedule 5 below.

***Section 38: Financial information***

43. See notes on Schedule 6 below.

***Section 39: Disclosure of information, &c.***

44. This section corresponds to section 17(2)–(6) of the PTA and has similar effect. The offences it sets out, including that at *subsection (2)(a)* which is sometimes called

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“tipping off”, are essential to the disclosure regime and have a powerful deterrent effect. The defence at section 39(5)(a) is listed in section 118(5) and therefore imposes an evidential burden only on the defendant.

## **Part V: Counter-Terrorist Powers**

### ***Sections 41–43: Arrest power and related search powers***

45. These sections make similar provision to the arrest and detention provisions at sections 14 and 15 of the PTA. There is a special arrest power for use in terrorist cases because experience continues to show that it is necessary to make provision for circumstances where, at the point when the police believe an arrest should take place, there is not enough to charge an individual with a particular offence even though there is reasonable suspicion of involvement with terrorism. Sections 42 and 43 give the police powers to search people liable to arrest under section 41. *Subsection (9)* of section 41 and *subsection (5)* of section 43, respectively, give constables the power to make an arrest under section 41(1) of the Act in any Part of the United Kingdom, and to search people under section 43 (these subsections in other words confer “cross border” powers of arrest and search).

### ***Sections 44–47: General powers to stop and search***

46. These sections make similar provision to the following sections of the PTA: section 13A (inserted by the [Criminal Justice and Public Order Act 1994 \(c. 33\)](#)) and section 13B (inserted by the [Prevention of Terrorism \(Additional Powers\) Act 1996 \(c. 7\)](#)). They give the police powers to stop and search vehicles and their occupants, and pedestrians, for the prevention of terrorism. As with the powers under the PTA, authorisations apply to a specific area and are for a maximum of 28 days (though that period may be renewed). The main difference is that vehicle stop and search authorisations, as well as pedestrian authorisations, will have to be confirmed or amended by a Secretary of State within 48 hours of their being made, or they will cease to have effect.

### ***Sections 48–52: Parking***

47. These sections make similar provision to that inserted by the [Prevention of Terrorism \(Additional Powers\) Act 1996 \(c. 7\)](#) as section 16D of the PTA. This gives the police the powers to restrict or prohibit parking for a limited period in a specified area for the prevention of terrorism and makes it an offence to park in or refuse to move from such an area.

### ***Section 53: Port and border controls***

48. This section brings into effect Schedule 7 on port and border controls, and by subsection (2) allows for the Secretary of State to repeal by order the provision at paragraph 16 of the Schedule, which enables him to bring in by order a requirement for passengers in the Common Travel Area to complete cards.

## **Part Vi: Miscellaneous**

49. This Part deals, among other things, with the offences which were discussed in Chapter 12 of the Government’s consultation paper under the heading “Ancillary offences”.

### ***Sections 54–55: Weapons training***

50. These sections correspond to the offence at section 34 of the EPA. Whereas that offence applied only in Northern Ireland, the new version applies throughout the UK. It has also been extended to cover chemical, biological and nuclear weapons and materials as well as conventional firearms and explosives; and to cover recruitment for training (*subsection (3)*) as well as the training itself. *Subsection (5)* of section 54 provides a defence for persons who are acting for non-terrorist purposes, such as the armed forces.

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This defence is listed in section 118(5) and therefore imposes an evidential burden only on the defendant.

51. A further modification concerns the need for a recipient of the training. Under *subsection (1)* of section 54, by contrast with its predecessor in the EPA, no recipient is needed for the offence to be committed. This means that the offence could cover someone who makes weapons instruction for terrorist purposes generally available, for example via the Internet.
52. The definitions of chemical, biological and nuclear weapons and materials are based on other statutes.
  - Under section 1 of the [Chemical Weapons Act 1996 \(c. 6\)](#), “chemical weapons” are toxic chemicals and their precursors; munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them; and equipment designed for use in connection with such munitions and devices.
  - Section 1(1)(b) of the [Biological Weapons Act 1974 \(c. 6\)](#) applies to any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict.
  - The meaning of “nuclear material” set out in the Schedule to the [Nuclear Material \(Offences\) Act 1983 \(c. 18\)](#), is “plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing”. The Schedule also further defines “uranium enriched in the isotopes 235 or 233”.

***Section 56: Directing terrorist organisation***

53. This offence is based on that in section 29 of the EPA. The EPA offence applies only in Northern Ireland; the equivalent offence under the Act is applicable throughout the UK. Although the offence is not expressly restricted to Irish terrorist organisations, this has been the practical effect of its being located in the EPA; section 56 will apply to all forms of terrorism. The organisation need not be proscribed for this offence to be committed.

***Sections 57–58: Possession offences***

54. These sections are based respectively on sections 16A and 16B of the PTA, which were added to the PTA by the [Criminal Justice and Public Order Act 1994 \(c. 33\)](#). Sections 16A and 16B were in turn based on sections 30 and 31 of the [Northern Ireland \(Emergency Provisions\) Act 1991 \(c. 24\)](#). Sections 57 and 58 are listed in section 118(5), so the defences they provide impose evidential burdens only on the defendant.

***Sections 59–61: Inciting terrorism: England and Wales, Scotland, and Northern Ireland***

55. The [Criminal Justice \(Terrorism and Conspiracy\) Act 1998 \(c. 40\)](#) made it an offence to conspire in the United Kingdom to commit criminal acts abroad. These sections similarly make it an offence for a person in the United Kingdom to incite terrorist acts abroad.
56. The offence of incitement to specific acts commonly associated with terrorism (such as hostage taking or hijacking aircraft) is already available, by virtue of the extra-territorial jurisdiction established over such offences in the past – and elsewhere in this Act – in legislation implementing various international counter-terrorism Conventions. This provision will, therefore, fill in remaining gaps in the law.

***Sections 62–64: Terrorist bombing and finance offences***

57. These sections are included to enable the UK to ratify the UN Convention for the Suppression of Terrorist Bombings and the UN Convention for the Suppression of the Financing of Terrorism. They will enable the UK to meet its obligations under the “extradite or prosecute” provisions of these Conventions, which are common to earlier international counter-terrorism Conventions.

**Part VII: Northern Ireland**

***Section 65: Scheduled offence: interpretation***

58. This section and Schedule 9 define which offences qualify for special treatment because they are terrorist offences, or are offences related to the situation in Northern Ireland; it also provides for the concept “scheduled offence” and lists them; and gives the Attorney General discretion in certain cases to certify offences out of the list. The section also enables the Secretary of State to add, or remove, by affirmative resolution procedure any offences from Part I or II or amend Part I or II.

***Section 66: Preliminary inquiry***

59. This section is concerned with committal proceedings in the Magistrates’ Court. It allows the prosecutor to request a preliminary inquiry in relation to scheduled offences. The provision was introduced in 1975 following the Gardiner Report, as a means of dealing with the problem of non-recognition of the court system by many defendants. In ordinary law a preliminary inquiry may be held only if the prosecutor requests it and the accused does not object. The effect of this section is that the alternative less expeditious preliminary investigation can be avoided. However, if the court considers that a preliminary investigation is in the interest of justice, it will not accede to the prosecution request for a preliminary inquiry. While committal proceedings remain part of the system, this section is useful as a means of keeping delays to a minimum.

***Section 67: Limitation of power to grant bail***

60. This section provides that in the case of a scheduled offence bail applications must be dealt with by a High Court judge or a judge of the Court of Appeal. The provision owes its origin to the fact that prior to its introduction, when magistrates were dealing with bail applications in terrorist cases, the courts became crowded with persons who tried to intimidate the court and who created a threatening atmosphere. Under the ordinary law there is a presumption, as opposed to a discretion, that bail will be granted, subject to similar considerations.

***Section 68: Bail: legal aid***

61. This provision is peculiar to scheduled offences as a consequence of the special arrangements provided for them. The arrangements are such that the defendant may make application for legal aid directly to the High Court which is hearing the bail application rather than through the High Court to the Law Society, which is the procedure for legal aid in ordinary criminal cases.

***Section 69: Maximum period of remand in custody***

62. This section provides that in the case of a scheduled offence, the maximum period of remand in custody will be 28 days. The justification for this dates back to Sir George Baker’s report in 1984 (Cm 9222, paragraphs 84–88). He reported that to bring a person charged with a scheduled offence before a magistrate every seven days was meaningless, especially since the magistrates’ court was precluded from granting bail in the majority of scheduled cases.

***Section 70–71: Young persons: custody on remand and directions***

63. This section applies to a young person (aged 14 to 16 inclusive) on remand for a scheduled offence. It provides that for security purposes a young person may be held in prison, or elsewhere, which is usually the (secure) Young Offenders Centre, at Hydebank Wood. Under ordinary law, a young person would be remanded to a training school or remand home, although if a young person is certified by the court to be unruly or depraved, he may be committed to a remand centre or the Young Offenders Centre. Given the gravity of scheduled offences, insecure accommodation would not be appropriate. The Secretary of State may give a direction for special arrangements to be made if necessary to prevent the escape or to ensure the safety of the young persons or others.

***Sections 72–73: Time limits for preliminary proceedings***

64. This provides that time limits may be set for the stages of proceedings leading up to trial in scheduled cases. The provision is based on section 22 of the [Prosecution of Offences Act 1985 \(c. 23\)](#), which is in force in England and Wales and provides for custody time limits. The power has never been used, although an administrative time limit scheme has been operating since 1992.

***Section 74: Court for trial***

65. The background to this provision is to be found in Sir George Baker’s 1984 Report, which was written at the time of the accomplice evidence (supergrass) trials, when court accommodation in Northern Ireland was under severe pressure. He recommended that provision should be made to enable the Lord Chancellor, after consultation with the Lord Chief Justice, to direct that trial on indictment of a scheduled offence should be held at the Crown Court sitting elsewhere than in Belfast.

***Section 75: Mode of trial on indictment***

66. This section provides for the mode of trial on indictment of scheduled offences to be by a court sitting without a jury – a “Diplock trial” – but with all the powers, authorities and jurisdiction of a jury court. It also provides that where both scheduled and non-scheduled offences are charged, the case is to be conducted as if all the offences charged were scheduled. The Diplock Court system dates back to 1972 when the Diplock Commission found that the jury system as a means of trying terrorist crime was under strain and in danger of breaking down. It highlighted the danger of perverse acquittals and intimidation of jurors. There is an unfettered right of appeal from the decision of the trial judge.

***Section 76: Admission in trial on indictment***

67. This section provides for the admissibility in evidence, in trials on indictment, of confessions made by persons charged with scheduled offences. It imposes an obligation on the court to exclude or disregard any evidence which has been obtained by subjecting the accused to torture or other improper treatment, or, in such a case, to order a fresh trial to be heard before a differently constituted court. It also provides for confession evidence to be excluded on the grounds of fairness to the accused or otherwise in the interests of justice.

***Section 77: Possession: onus of proof***

68. This section makes provision for the onus of proof in trials on indictment for offences of possession of firearms and explosives. The provision is based on a recommendation made by the Diplock Commission; its effect is to permit the court to make assumptions as to the accused’s knowledge and control of items found on premises where he was present or occupied or used. The section is listed in section 118(5) so the defendant

need only satisfy an evidential burden as to his lack of knowledge or control in order to displace the assumptions.

***Section 79: Restricted remission***

69. This section provides that the remission granted in respect of a sentence of imprisonment of 5 years or more for a scheduled offence, shall not exceed one third of the term. This provision was introduced in 1989 as a response to the increased violence of the time. Its effect is mitigated by the [Northern Ireland \(Remission of Sentences\) Act 1995 \(c. 47\)](#). That Act provides for the release on licence of those prisoners at the half-way point of sentence. Whilst on licence, such prisoners may be recalled up until the two-thirds point if they are thought likely to commit further offences or if their continued liberty would pose a threat to the safety of the public. From the two-thirds point on they may be granted remission.

***Section 80: Conviction during remission***

70. This section applies to a person convicted of a scheduled offence committed during a period of remission for a previous conviction for which that person was sentenced to a custodial sentence of more than 1 year. In calculating the unexpired portion of a previous sentence it is important to note that time continues to run while a person is at large and so the actual effect of the section will depend on the time when the later offence is committed. This means that a person released on remission after serving say 2 years of a four year sentence who re-offended after the full term (4 years) of the sentence was expired will not be affected by the section, but a person who re-offended and was re-convicted after three years would be required to serve one year before starting his new sentence (the unexpired portion does not attract remission).

***Section 82: Constables' power of arrest and seizure***

71. This section confers on the police a general power of arrest on reasonable suspicion, but without a warrant, for scheduled offences and other offences under these provisions. It also provides an associated power of entry and search and a general power to seize anything which a constable has reasonable grounds to suspect may be used in the commission of a scheduled offence or a non-scheduled offence under this Act.

***Section 83: Armed forces' power of arrest and seizure***

72. This section confers on a member of the Armed Forces general powers of arrest, entry, search and seizure without a warrant when there is reasonable grounds for suspecting the person of committing an offence or of being a terrorist. There is no equivalent power under the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(SI 1989/1341\)](#) ("PACE(NI)"), since PACE(NI) does not apply to the Army. *Subsection (6)* provides that *subsection (2)* does not seek to legalise any act which would be unlawful under the Human Rights Act 1998.

***Section 84: Munitions and transmitters***

73. See notes on Schedule 10 below.

***Section 85: Explosives inspectors***

74. This power is primarily intended for use by those who provide security at Court premises, since the powers of an explosives inspector under the [Explosives Act 1875 \(c. 17\)](#) do not extend to public places. Some members of the Health and Safety Executive also have powers under that Act to enable them to conduct annual inspections of licensed explosives factories and magazines.

***Section 86: Unlawfully detained persons***

75. This section allows a police officer or soldier to enter any premises to search for persons who are believed to be unlawfully detained in circumstances where their life is in danger. No warrant is necessary.

***Sections 87–88: Examination of documents***

76. These sections allow the police and Army to examine any document or record found in the course of a search to ascertain whether it contains any information of a kind likely to be useful to terrorists. No warrant nor reasonable suspicion is required.

***Section 89: Power to stop and question***

77. This section empowers the police and Army to stop and question persons as to their identity, movements or knowledge of any recent incident endangering life.

***Sections 90–93: Power of entry; taking possession of land; road closure: permission***

78. [Sections 90](#) and [91](#) allow the police or army to enter premises to preserve the peace or maintain order, and allow a person on the authorisation of the Secretary of State to take possession of land etc for the preservation of peace or the maintenance of order. The common law power of the police is to enter in order to save life or limb, to prevent serious damage to property and to deal with or prevent a breach of the peace.
79. [Section 92](#) allows for road closures. Powers to interfere with public highways are to be found under road traffic law ([Road Traffic Act 1988 \(c. 52\)](#)). There are no other provisions to permit the police to interfere with highways etc, although they may take specific action such as denying access to highways to prevent public disorder or a potential breach of the peace under the [Public Order Act 1986 \(c. 64\)](#).
80. While Lord Lloyd recommended that these provisions should be removed once lasting peace is established, the powers are still necessary in terms of land requisitioned for both RUC stations and security force bases and to provide protection for residents at sectarian interfaces where the fear of attack by opposing community factions remains real.

***Section 94: Road closure: direction***

81. This section is used to make permanent road closures and to provide for town barriers. The condition is the preservation of the peace or the maintenance of order: reasonable suspicion is not required. Lord Lloyd recommends this provision be removed once lasting peace is established.

***Section 95: Supplementary***

82. This section makes supplementary provision including allowing for vehicles to be stopped and searched.

***Section 96: Preservation of the peace: regulations***

83. This section enables the Secretary of State to make regulations for the preservation of the peace and the maintenance of order. The Northern Ireland (Emergency Provisions) Regulations 1975 and 1991 ([SI 1975/2213](#) and [1991/1759](#)) were made under the equivalent section of the EPA. The power is wide-ranging but regulations made under it are subject to the affirmative resolution procedure by Parliament.

***Section 98: Independent Assessor of Military Complaints Procedures***

84. The Office of the Independent Assessor of Military Complaints Procedures came into existence in its current form under the EPA 1996. Lord Colville had recommended

it in his review of the 1978 and 1987 Acts and the appointment is discretionary, looking forward to a time when the Army will no longer patrol in support of the RUC. The Independent Assessor's role is to review procedures for the investigation of complaints about the army and to investigate any representations made to him about those procedures. While the Secretary of State has a power (rather than a duty) to appoint an Assessor, the Government has said that the position will remain while the Army is needed to act in support of the police in Northern Ireland. Further provision about the Assessor is made in Schedule 11, which this section activates.

***Sections 99–101: Police and army powers code of practice; video recording code of practice; codes of practice: supplementary***

85. These sections continue the power of the Secretary of State to prepare, publish, issue and revise codes of practice on the seizure and retention of property by the police and the powers of the police and army under this Part. It also provides for a silent video recording scheme in the holding centres.

***Section 103: Terrorist information***

86. This section makes it an offence to collect or possess information about specified persons which is likely to be useful to terrorists. Possessing such information is also an offence. *Subsection (2)* defines the persons relevant to this section. *Subsection (5)* provides that it is a defence to prove that a person had a reasonable excuse for the collection of such information: this defence is included in section 118(5) so imposes an evidential burden only on the defendant.

***Section 104: Police powers: records***

87. This section places a requirement on the Chief Constable of the RUC to make arrangements for records to be kept when powers are exercised under this Part of the Act. It is envisaged that records will be kept unless there are reasons which make this impractical: for example following a major incident when the police by necessity would need to stop and question large numbers of people.

***Section 106: Private security services***

88. See notes on Schedule 13 below.

***Section 107: Specified organisations: interpretation***

89. This section defines specified organisations for the purposes of the four following sections. These provisions are based on sections 1, 2 and 4 of the [Criminal Justice \(Terrorism and Conspiracy\) Act 1998 \(c. 40\)](#) which was introduced after the Omagh bomb.

***Section 108: Proscribed organisations: evidence***

90. This section provides that oral evidence from a police officer of at least the rank of superintendent to the effect that the accused is or was a member of a specified organisation shall be admissible as evidence of such membership. This is subject to *subsection (3)(b)*, which provides that a suspect cannot be committed for trial, be found to have a case to answer, or be convicted, solely on the basis of the officer's statement.

***Section 109: Proscribed organisations: inference***

91. This section provides that the court may draw inferences from an accused's failure to mention a fact material to an offence which he could reasonably be expected to mention when questioned. The court may only draw such inferences where the accused was permitted to consult a solicitor before being questioned. The accused shall not be

*These notes refer to the Terrorism Act 2000 (c.11)  
which received Royal Assent on 20th July 2000*

committed for trial, found to have a case to answer or be convicted solely on the basis of inferences under this section.

### ***Section 110: Supplementary***

92. This section makes it clear that the preceding sections do not prejudice the admissibility of other evidence, preclude the drawing of other inferences, or prejudice other legislation which states that certain evidence is inadmissible in proceedings.

### ***Section 111: Forfeiture orders***

93. This section makes provision for the court to order forfeiture of money or property. This applies where a person is convicted of an offence under section 11 or 12 and belonged to a specified organisation at the time the offence was committed. The court is able to order forfeiture of money or property if the individual had it in his possession when the offence was committed and if it had been used, or was likely to be used, in connection with the activities of the specified organisation. As with forfeiture provisions elsewhere in the Act the court must give an opportunity to be heard to any other individual who has an interest in money or property which could be subject to a forfeiture order under this section.

### ***Schedule 1: Northern Ireland (Emergency Provisions) Act 1996***

94. **Schedule 1** to the Act retains in force the EPA from the date on which the Act received Royal Assent for a period of one year; Ministers have referred to this interim position as the “transitional EPA”. During debate in Commons Committee, the Government made it clear that it intends to bring the Act into force early in 2001. The transitional EPA will therefore be short-lived and we do not anticipate that it would be in force for a full year. However, paragraph 2(2) of Schedule 1 ensures that, should the commencement of the Act be delayed, the transitional EPA could be renewed for a further period of 12 months.
95. This Schedule also makes some minor adjustments to the existing EPA provisions, which mostly give effect to the United Kingdom’s ECHR obligations. Those adjustments are set out at paragraphs 7 to 11 of the Schedule. Section 118 of the Act will also apply, during the transitional period, to the provisions listed in section 118(5)(b), so these provisions will impose evidential burdens only on the defendant. Paragraph 12 extends the life of Part V of the EPA on the provision of private security services with the addition of the new appeal mechanism provided for in sub-paragraphs (4) to (8).

### ***Schedule 2: Proscribed Organisations***

96. See notes on Part II above.

### ***Schedule 3: the Proscribed Organisations Appeal Commission***

#### ***Paragraphs 1–3***

97. These paragraphs provide that the officers of the Proscribed Organisations Appeal Commission (“POAC”) will be appointed by the Lord Chancellor and that he will be responsible for their remuneration.

#### ***Paragraphs 4–5***

98. These paragraphs set out the Commission’s sitting arrangements and the areas in which the Lord Chancellor may make rules governing POAC’s proceedings.

### **Paragraphs 6–7**

99. These paragraphs set out arrangements for designating an individual with the locus to represent an organisation, and a person to represent the interests of the organisation, or other applicant who is appealing, for any parts of the proceedings from which they and their legal advisers are excluded by the Commission (by virtue of one of the rules made under paragraph 5).

### **Paragraph 8**

100. This paragraph provides that section 9(1) of the [Interception of Communications Act 1985 \(c. 56\)](#), which bars intercept material evidence from being used in proceedings, will not apply for POAC proceedings. It goes on to stipulate that such material must not be disclosed to the organisation or other applicant, or their legal representatives.

### **Schedule 4: Forfeiture Orders**

101. If a person is convicted of a terrorist property offence under Part III of the Act, then property connected with the offence will be subject to forfeiture, under section 23. This kind of forfeiture is known as “criminal forfeiture” because it follows conviction for a criminal offence. It is to be distinguished from the “civil forfeiture” which applies under section 28 to terrorist cash seized at borders. Schedule 4, which corresponds to Schedule 4 of the PTA and has similar effect, sets out the procedure for criminal forfeiture under section 23.

102. The Schedule is in four Parts, subdivided as shown below:

- Part I: England and Wales
  - Interpretation
  - Implementation of forfeiture orders
  - Restraint orders
  - Compensation
  - Proceedings for an offence: timing
  - Enforcement of orders made elsewhere in the British Islands
  - Enforcement of orders made in designated countries
- Part II: Scotland
  - Implementation of forfeiture orders
  - Administrators
  - Restraint orders
  - Compensation
  - Proceedings for an offence: timing
  - Enforcement of orders made elsewhere in the British Islands
  - Enforcement of orders made in designated countries
- Part III: Northern Ireland
  - Interpretation
  - Implementation of forfeiture orders
  - Restraint orders

- Compensation
- Proceedings for an offence: timing
- Enforcement of orders made elsewhere in the British Islands
- Enforcement of orders made in designated countries
- Part IV: Insolvency: United Kingdom provisions

#### ***Paragraphs 2–4: Implementation of forfeiture orders***

103. These paragraphs correspond to paragraphs 1–2 of Schedule 4 to the PTA and have the same effect. *Sub-paragraph (2)* of paragraph 2 allows for the fact that a forfeiture order could be made on conviction but set aside if the conviction is overturned on appeal: while such an outcome is still a possibility, the money or other property will not be handed over. The exception is an appeal “out of time”: in other words, the possibility that a case may be looked at again years later in the light of new or newly-discovered evidence. Forfeiture orders can come into effect when this possibility still exists.
104. Section 140 of the [Magistrates’ Court Act 1980 \(c. 43\)](#) provides as follows:
- Subject to any enactment relating to customs or excise, anything other than money forfeited on a conviction by a magistrates’ court or the forfeiture of which may be enforced by a magistrates’ court shall be sold or otherwise disposed of in such manner as the court may direct; and the proceeds shall be applied as if they were a fine imposed under the enactment on which proceedings for the forfeiture are founded.
- It is disapplied by *sub-paragraph (4)* of paragraph 2 to ensure there is no overlap with sub-paragraph (1)(b)–(c).

#### ***Paragraphs 5–8: Restraint orders***

105. These paragraphs correspond to paragraphs 3–6 of Schedule 4 to the PTA and have the same effect. The purpose of restraint orders is to prevent someone accused of a Part III offence from selling his property in order to avoid forfeiture. They can therefore be made at an early stage in the case: even (under *sub-paragraph (2)* of paragraph 5) before proceedings have been formally instituted. Although the restraint order is formally made by the High Court, the prosecution can apply without notice (that is, *ex parte*) to a judge in chambers (*sub-paragraph (4)*). This is because in some cases it is important to act as quickly as possible.
106. [Paragraph 8](#) provides for restraint orders to be treated in the same manner as certain civil actions under the [Land Charges Act 1972 \(c. 61\)](#) and the [Land Registration Act 1925 \(c. 21\)](#) and enables the orders to be registered, so restricting dealing in the restrained property.

#### ***Paragraphs 9–10: Compensation***

107. [Paragraph 9](#) corresponds to paragraph 7 of Schedule 4 to the PTA and has similar effect. Whereas under the PTA, compensation could only be paid where proceedings had been instituted, under the Act it will also be payable where a restraint order is made in relation to expected proceedings but the proceedings are not in the event instituted. Paragraph 10 comes into play when an organisation is deproscribed following a successful appeal to POAC. It enables a person with an interest in any property which has been subject to a forfeiture or restraint order under the Schedule to apply to the High Court for compensation.

***Paragraph 11: Proceedings for an offence: timing***

108. This paragraph corresponds to paragraphs 3(8)–(9) of Schedule 4 to the PTA and has the same effect.

***Paragraphs 12–13: Enforcement of orders made elsewhere in the British Islands***

109. These paragraphs correspond to paragraphs 8–9 of Schedule 4 of the PTA and have the same effect. They allow orders made in Scotland, Northern Ireland, the Isle of Man and the Channel Islands to be enforced in England and Wales. (There are similar provisions in the Scotland and Northern Ireland Parts of the Schedule.)
110. They provide that the order made in Scotland, Northern Ireland or the Islands must be registered with the High Court: under *sub-paragraphs (3)–(4)* of paragraph 13 it is for the High Court to make rules about how exactly such orders are to be initially registered and later cancelled or varied. Once the order is registered, the rest of paragraph 13 ensures that the High Court has the appropriate powers to deal with it.

***Paragraph 14: Enforcement of orders made in designated countries***

111. This paragraph corresponds to paragraph 10 of Schedule 4 to the PTA and has the same effect. It makes it possible for restraint and forfeiture orders made in other countries to be enforced in England and Wales in accordance with the procedures in an Order in Council designating that country.

***Paragraphs 15–44: Scotland and Northern Ireland***

112. These paragraphs make provision for Scotland and Northern Ireland equivalent to that for England and Wales in paragraphs 1–14. Paragraphs 36–37 apply in Northern Ireland only and have no equivalent in England and Wales or Scotland. However, by virtue of section 112(5) these provisions are treated as part of Part VII of the Act and are therefore temporary and subject to annual renewal.

***Paragraphs 45–53: Insolvency: UK Provisions***

113. These paragraphs allow for cases where a person subject to a forfeiture order is declared bankrupt. Under *sub-paragraph (3)* of paragraph 47, the forfeiture order is set aside; but under paragraph 48, the Secretary of State is taken to be a creditor, and has to be paid after the debts of all other creditors. If the bankruptcy order is annulled then under paragraph 49 the forfeiture order comes back into effect. Paragraphs 50–51 provide limited protection from liability for insolvency practitioners in respect of the exercise of their duties.

***Schedule 5: Terrorist Investigations***

114. This Schedule, which is activated by section 37, corresponds to Schedule 7 to the PTA and was discussed in Chapter 6 of the Government’s consultation document. Part I deals with England, Wales and Northern Ireland; Part II makes corresponding provision for Scotland. Most of the Schedule replicates the provisions of the PTA with some modification as indicated below.

***Paragraphs 1–3: Searches***

115. These paragraphs correspond to paragraphs 2–2A of Schedule 7 to the PTA and have the same effect, bringing together the provisions for dwellings in paragraph 2 and non-residential premises in paragraph 2A. They deal with warrants permitting search for and seizure of ordinary material (as opposed to “excepted material” as defined in paragraph 4).
116. In the PTA, paragraph 2(1)(a) defined relevant material in relation to “the investigation” – that is, the investigation for which the warrant was issued. The equivalent provision in

the Act, paragraph 1(3)(a), includes in the definition anything likely to be of substantial value to “a terrorist investigation”, that is, any terrorist investigation. This is intended to enable a police officer to seize and retain not only material relevant to the investigation for which the warrant was issued but any material relevant to investigation of any of the matters specified in section 32 without having to go back to court for a further warrant. A similar change is made throughout the rest of the Schedule.

117. *Sub-paragraph (5)(c)* of paragraph 1 gives the judge discretion over the necessity for a warrant in the particular case. This sub-paragraph replaces the conditions in paragraph 2(2) of Schedule 7 to the PTA. The reasoning behind this is best illustrated by a hypothetical example. Suppose the police need to find, seize and retain certain material on certain premises. They successfully contact a person entitled to grant entry to the premises and access to the material. That person is content to grant them such entry and access, but is not content for the material to be seized and retained. The police therefore need a warrant to authorise seizing and retaining the material; but the conditions in paragraph 2(2) of Schedule 7 to the PTA are not met, so under the PTA the justice of the peace cannot issue a warrant. It is to cover this eventuality that, in replicating this provision, a more general test that “the issue of a warrant is likely to be necessary in the circumstances of the case” has been substituted.

#### ***Paragraph 4: Excepted material***

118. The material in this paragraph is similar to that in the second half of paragraph 1 of Schedule 7 to the PTA. It defines the categories of material to which the different investigative powers in the Schedule can be applied.

#### ***Paragraphs 5–10: Excluded and special procedure material: production and access***

119. These paragraphs correspond to paragraphs 3–4 of Schedule 7 to the PTA and have the same effect. They provide for “production orders”.

#### ***Paragraphs 11–12: Excluded and special procedure material: search***

120. These paragraphs correspond to paragraph 5 of Schedule 7 to the PTA and have the same effect. They provide similar warrants to those in paragraphs 1–3 but this time for excluded and special procedure material.

#### ***Paragraphs 13–14: Explanations***

121. These paragraphs correspond to paragraph 6 of Schedule 7 to the PTA. There is one change in effect. A person’s response to an explanation order represents information given under compulsion and cannot normally be used in evidence against him, as this would be a breach of the right against self-incrimination (or “right to silence”). The PTA provided two exceptions to this general principle.

- The first is if the criminal trial in question is for the offence of giving a false or misleading answer to the explanation order itself (at paragraph 6(3)(a) in the PTA).
- The second is in a trial for any other offence, if in that trial the person makes a statement inconsistent with his response to the explanation order (at paragraph 6(3)(b) in the PTA).

The first of these exceptions is replicated in the Act (at paragraph 13(4)) but the second has been dropped.

#### ***Paragraphs 15–16: Urgent cases***

122. These paragraphs correspond to paragraph 7 of Schedule 7 to the PTA and have similar effect. They provide that in urgent cases a police superintendent may issue warrants and explanation orders, so long as he notifies the Secretary of State. The condition in paragraph 7(1) that the action must be “in the interests of the State” has been dropped.

This is because the Act applies to all forms of terrorism: the power might therefore be used in a case where the terrorism was directed against another country.

### ***Paragraphs 19–21: Secretary of State orders***

123. Under paragraph 8 of Schedule 7 to the PTA, in Northern Ireland only, the Secretary of State may authorise the police to carry out searches for, or require the production of, material in connection with investigations into terrorist finance offences or in relation to the offence of directing a terrorist organisation. These paragraphs replicate those provisions, again for Northern Ireland only, in an updated form consistent with the other provisions in Schedule 5 to the Act. Section 112(5) ensures that the provisions are treated as if they were in Part VII of the Act. This will mean that, along with all the Northern Ireland specific measures, these provisions will be temporary and renewable.

### ***Schedule 6: Financial Information***

124. This Schedule adds to the powers available to investigate terrorist finance a further investigative tool which has already proved its effectiveness in the investigation of the proceeds of crime in Northern Ireland. The purpose of an order under the Schedule is to enable a constable to identify accounts in relation to terrorist investigations. It is therefore intended for use at an earlier stage in an investigation than production and explanation orders under Schedule 5 to the Act.
125. This method of investigation is sometimes known as a “general bank circular” investigation.
126. The provisions are modelled on certain powers of “financial investigators” in Northern Ireland under Schedule 2 of the Proceeds of Crime (Northern Ireland) Order 1996 (SI 1996/1299). There are no “financial investigators” outside Northern Ireland. The power in the Schedule is therefore to be exercisable by a constable. The other main difference with the Northern Ireland model is that while the power in the 1996 Order is to investigate proceeds of crime, that in the new Schedule is to investigate terrorist finance. This is both a broader category (because it can include money or other property intended for use in terrorism as well as any proceeds of terrorist acts) and a narrower one (because it is focussed on terrorist as opposed to any other crime).

### ***Paragraphs 1–5***

127. These paragraphs allow a constable of at least the rank of superintendent to apply to a Circuit judge or equivalent for an order enabling the constable to require a financial institution to provide customer information within a specified time and in a specified manner. It is an offence for an institution to fail to comply with the requirement.

### ***Paragraph 6***

128. The definition in this paragraph of “financial institution” is based on the definition of “relevant financial business” in Regulation 4 of the Money Laundering Regulations 1993 (SI 1993/1933).

### ***Paragraph 7***

129. This paragraph defines the customer information which the constable may require. The definition of a “business relationship” is based on that in Regulation 3 of the Money Laundering Regulations 1993.

### ***Paragraph 8***

130. This paragraph allows for the non-compliance offence in paragraph 1 to be committed by an officer of an institution as well as by the institution itself.

### ***Schedule 7: Port and Border Controls***

131. This Schedule makes similar provision to that at Schedule 5 to the PTA. The main differences are that:
- the maximum period that a person may be detained at a port for questioning, to determine whether he is someone who is, or has been, concerned in the commission, preparation or instigation of acts of terrorism, is 9 hours (paragraph 6);
  - captains of aircraft carrying passengers other than for reward may allow their passengers to embark from, or disembark at, non-designated airports provided they give 12 hours' notice to a constable in the relevant area (paragraph 12);
  - the "carding" provision, which allows an examining officer to require certain passengers leaving or entering Great Britain or Northern Ireland to complete cards, will be subject to the affirmative resolution procedure and may be lapsed or repealed (paragraph 16); and
  - the kind of information relating to passengers, crews or their vehicles which examining officers will be able to request will be set out in a separate order subject to the affirmative resolution procedure on the first occasion when it is made, and to the negative resolution procedure thereafter (paragraph 17).

### ***Schedule 8: Detention***

#### **Part I: Treatment of persons detained under [section 41](#) or examined under [Schedule 7](#)**

132. [Paragraph 1](#) is similar to the power of the Secretary of State under the PTA to direct the places at which persons detained under [section 41](#) or [Schedule 7](#) shall be detained. Paragraphs 2–20 make provision for those detained under the Act's arrest and detention procedures including that steps may be taken to identify them; that fingerprints, intimate samples (e.g. DNA) and non-intimate samples (e.g. hair) may be taken; and the limited circumstances in which a detainee may be kept incommunicado or without access to legal advice. Paragraph 3 provides that interviews at a police station must be audio recorded in compliance with a Code of Practice. It also provides an order-making power whereby similar provision may be made in respect of video recording.

#### **Part II: Review of detention under [section 41](#)**

133. [Paragraphs 21–28](#) set out the arrangements for reviews of the continued detention by the police of a person arrested under [section 41](#).

#### **Part III: Extension of detention under [section 41](#)**

##### ***Paragraph 29: Warrants of further detention***

134. This paragraph provides that a police officer of at least the rank of superintendent may apply for a warrant of further detention in respect of an arrest under [section 41](#). The application will be made to a judicial authority as defined by *sub-paragraph (4)*. A warrant issued by the judicial authority will authorise the detention of a specific person for a specified period of time, with the maximum detention period being seven days from the time of arrest under [section 41](#), or from the time when his examination under [Schedule 7](#) began, whichever is earlier.

##### ***Paragraph 30: Time limit***

135. This paragraph makes provision for an application to be made either within the 48-hour period specified in [section 41\(3\)](#) or within six hours of the end of that period. Where an application is made within this six-hour period the judicial authority will dismiss the

application, if he thinks it could reasonably have been made before the 48-hour period expired.

***Paragraph 31: Notice***

136. This paragraph provides that an individual to whom an application for further detention applies must be notified that an application has been made, the time at which it is to be heard, and the grounds on which further detention is sought.

***Paragraph 34: Information***

137. This paragraph further provides that information about the application may be withheld from the individual or anyone representing him in certain circumstances.

***Schedule 9: Scheduled Offences***

138. This Schedule sets out those offences which are subject to the special provisions set out in Part VII of the Act for non-jury trials on account of being terrorist-related. In relation to a number of these offences, the Schedule enables the Attorney General for Northern Ireland to certify that particular cases are not to be treated as “scheduled”.

***Schedule 10: Munitions and Transmitters: Search and Seizure***

***Paragraphs 2–7: Entering premises; stopping and searching persons; and seizure***

139. These paragraphs contain the main powers used by the police and Army to enter premises and dwellinghouses for the purpose of searching for arms etc. Under PACE(NI), the police have general powers of entry and search of places to which the public has access. A search warrant is required to search dwellings other than for the purposes of making an arrest. PACE(NI) also provides entry and search powers upon or after arrest. Paragraph 4 adds to such powers: a power to restrict movement of persons present on premises which are in the course of being searched
140. PACE(NI) powers to stop and search in public places are exercisable on suspicion that a stolen item, offensive weapon, or an item intended for criminal use will be found. Entry and search of premises other than to make an arrest or prevent a breach of the peace, damage or injury must be under the authority of a warrant. By contrast paragraph 6 allows the police and Army to stop and search any person in a public place for unlawful munition or wireless apparatus and to search any person not in a public place on reasonable suspicion of having such items.

***Paragraph 8–11 : Records and offence***

141. This provision places a duty on the police and Army to make a written record of searches conducted under Schedule 10; and it makes it an offence to fail to comply with any requirement on the restriction of movement of persons during a search; to wilfully obstruct or seek to frustrate the object of such a search; and to fail to stop when required to do so.

***Schedule 11: Independent Assessor of Military Complaints Procedures in Northern Ireland***

142. See notes on section 98 above.

***Schedule 12: Compensation***

143. This Schedule allows for compensation to be claimed from the Secretary of State where property is taken, occupied, destroyed or damaged, or any other private property rights interfered with as a consequence of action taken under Part VII of the Act. No compensation is payable, however, where the action taken is in connection with, or

reveals evidence of, a scheduled offence or an offence under the Act for which the owner of the property is later convicted.

### ***Schedule 13: Private Security Services***

#### ***Paragraphs 1–5: Security services interpretation; unlicensed services: offences***

144. These paragraphs define security services and create offences of providing or offering security services for reward without being a holder or the agent of a holder of a licence from the Secretary of State, and of advertising the provision of security services by a non-holder of a licence. It is also an offence under this schedule to pay money for security services to someone who is not the holder of a valid licence; however, paragraph 4 allows for a defence of reasonable belief if a person is charged with such an offence.

#### ***Paragraph 6: Application for licence***

145. This paragraph deals with applications for licences to the Secretary of State and specifies the kind of information that may be required. Under the paragraph it is an offence knowingly or recklessly to give false or misleading information in connection with an application.

#### ***Paragraphs 7–9: Issue, duration, and revocation of licence***

146. These paragraphs are based on section 39 of the EPA and have similar effect subject to one substantive modification. *Sub-paragraphs (2)–(6)* of paragraph 7 confer a power on the Secretary of State to impose a condition when granting a licence for the provision of security services. The inclusion of this new power will permit a much more flexible and proportionate response to applications.
147. More generally the paragraphs make provision for the issue, duration and revocation of licences by the Secretary of State and allow him to refuse or revoke a licence if he is satisfied that a proscribed organisation, or an organisation closely associated with a proscribed organisation, would benefit from the issue of a licence; or where the applicant has persistently failed to comply with the requirements of this Schedule or a condition imposed with his licence.

#### ***Paragraphs 10–11: Appeal***

148. These paragraphs provide a new route of appeal to the High Court against refusal, revocation or conditions imposed on a licence which is designed to fulfil our ECHR obligations under Article 6. If the Secretary of State wishes to rely on a certificate under paragraph 11(1) in order to protect any sensitive information on which he may have based his decision, the applicant may appeal against the certificate to the Northern Ireland Tribunal who will scrutinise the basis for it. In either case the merits of the Secretary of State's decision will be examined by a judicial body.

#### ***Paragraphs 12–15: Change of personnel***

149. These paragraphs make it a requirement for applicants for and holders of licences to notify the Secretary of State of certain changes, or proposed changes, of personnel affecting their business. It also imposes time limits on when notifications must be made in advance of any changes being introduced.

### ***Schedule 14: Exercise of Officers' Powers***

150. [Paragraph 4](#) allows information collected by immigration officers and customs officers to be supplied to police officers and vice versa thus facilitating increased co-operation between frontier control agencies. It also creates an order-making power to permit other organisations to be added to the list in future.

*These notes refer to the Terrorism Act 2000 (c.11)  
which received Royal Assent on 20th July 2000*

151. Paragraphs 5–7 make provision for the issuing of codes of practice for authorised and examining officers.

**Schedule 16: Repeals**

152. The Act repeals the PTA, EPA and sections 1 to 4 of the Criminal Justice (Terrorism and Conspiracy) Act 1998; transitional provision is made by section 129.

**Exclusion orders**

153. Part II of the PTA includes a power for the Secretary of State to make exclusion orders. These orders could prevent a person from entering Northern Ireland, or from entering Great Britain, or from entering the United Kingdom. This Part was lapsed by the Government in 1998 and is not replicated in the Act.

**COMMENCEMENT**

154. Section 128 provides for the Northern Ireland transitional provisions (section 2(1)(b) and (2) and Schedule 1, together with section 118, which applies to some provisions as they have effect by virtue of Schedule 1), general transitional provisions, and extent and short title provisions to come into force on Royal Assent. The other provisions will come into force on such dates as the Secretary of State appoints by order.

**HANSARD REFERENCES**

155. The following table sets out the dates and Hansard references for each stage of this Act’s passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b>House of Commons</b>		
Introduction	2 December 1999	Vol 340 Col 443
Second Reading	14 December 1999	Vol 341 Cols 152–234
Committee	18 January, 20 January, 25 January, 27 January, 1 February, 3 February and 8 February 2000	Hansard Standing Committee D
Report and Third Reading	15 March 2000	Vol 345 Col 329 to Vol 346 Col 473
<b>House of Lords</b>		
Introduction	20 March 2000	Vol 611 Col 9
Second Reading	6 April 2000	Vol 611 Cols 1427–1490
Committee	16 May 2000	Vol 613 Cols 214–278
	23 May 2000	Vol 613 Cols 641–664 and 674–762
	6 June 2000	Vol 613 Cols 1044–1066 and 1076–1103
Report	20 June 2000	Vol 614 Cols 159–224
Third Reading	4 July 2000	Vol 614 Cols 1442–1459
<b>House of Commons</b>		

*These notes refer to the Terrorism Act 2000 (c.11)  
which received Royal Assent on 20th July 2000*

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
Commons consideration of Lords amendments	10 July 2000	Vol 353 Cols 627–665
<b>Royal Assent</b> – 20 July 2000		House of Lords Hansard Vol 615 Col 1262
		House of Commons Hansard Vol 354 Col 608