

ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

EXPLANATORY NOTES

OVERVIEW

4. The Act is in 14 Parts.

Terrorist property

5. **Part 1** and Schedules 1 and 2 of the Act contain provisions to prevent terrorists from gaining access to their money. They complement provisions in the new Proceeds of Crime Bill and ensure that investigative and freezing powers are available wherever funds could be used to finance terrorism.
6. The introduction of account monitoring orders enable the police to require financial institutions to provide information on accounts for up to 90 days. The existing requirement to report knowledge or suspicion of terrorist financing has been strengthened, for the regulated sector, so that it is an offence not to report where there were “reasonable grounds” for suspicion.
7. The Act gives law enforcement agencies the power to seize terrorist cash anywhere in the UK, and the power to freeze assets at the start of an investigation, rather than when the person is about to be charged, reducing the risk that funds will be used or moved before they can be frozen

Freezing orders

8. **Part 2** creates a new power which enables the Treasury to freeze the assets of overseas governments or residents who have taken, or are likely to take, action to the detriment of the UK's economy or action constituting a threat to the life or property of a national or resident of the UK. The Treasury's previous power to freeze assets, contained in the 1964 Act, is repealed.

Disclosure of information

9. **Part 3** and Schedule 4 of the Act deal with information disclosure provisions for public authorities.
10. **Section 17** clarifies and extends a number of existing provisions for disclosure of information from public authorities to agencies involved in criminal investigations and proceedings. The gateways ensure that public authorities can disclose information which is subject to a statutory restriction on disclosure for the purposes of a criminal investigation or criminal proceedings.
11. **Section 19** creates a new gateway giving HM Customs and Excise and the Inland Revenue a general power to disclose information held by them for law enforcement purposes and to the intelligence services for their purposes.

Immigration and asylum

12. **Part 4**, sections 21 to 32 (“Suspected international terrorists”) allow the detention of those the Secretary of State has certified as threats to national security and who are suspected of being international terrorists where their removal is not possible at the present time. Such detention would be subject to regular independent review by the Special Immigration Appeals Commission (SIAC). These provisions change the current law, which allows detention with a view to removal only where removal is a realistic option within a reasonable period of time. The detention powers will cease to have effect on 10 November 2006.
13. It is also intended to speed up the asylum process for suspected terrorists. The Act excludes substantive consideration of asylum claims where the Secretary of State certifies that their removal would be conducive to the public good. This would not be in breach of the 1951 Refugee Convention because they are excluded from the protection of that Convention.
14. It also prevents judicial review of decisions of the SIAC, which is the body that deals with suspected terrorists' appeals against immigration decisions: it has three members hearing an appeal, one of whom holds or has held high judicial office and another of whom is or has been an immigration judge. The Act makes SIAC a superior court of record. There remains an avenue of appeal from SIAC to the Court of Appeal on a point of law.
15. The Act allows for the retention, for 10 years, of fingerprints taken in asylum and certain immigration cases. This helps prevent applicants who have had their case resolved from re-applying and creating multiple identities, which can be used in the perpetration of terrorism or other serious crimes.

Race and religion

16. **Part 5** of the Act extends the racially aggravated offences contained in the Crime and Disorder Act 1998 to cover offences aggravated by religious hostility. It amends the provisions in the Public Order Act 1986 concerning incitement to racial hatred to include cases where the hatred is directed against groups abroad, and increases the maximum penalty for such offences from 2 to 7 years imprisonment.

Weapons of mass destruction

17. **Part 6** of the Act strengthens current legislation controlling chemical, nuclear and biological weapons.

Control of pathogens and toxins

18. The provisions set out in Part 7 (and Schedules 5 and 6) places an obligation on managers of laboratories and other premises holding stocks of specified disease-causing micro-organisms and toxins to notify their holdings, and to comply with any reasonable security requirements which the police may impose.
19. It also requires managers of laboratories and other premises, on request, to furnish the police with details of people with access to the dangerous substances held there. The Secretary of State is given power to direct that a named individual must not be allowed access to such disease strains or the premises in which they are held.

Nuclear Security

20. The provisions in Part 8 reinforce and update the regulatory regime for security in the nuclear industry.
21. They also extend the jurisdiction for the United Kingdom Atomic Energy Authority Constabulary (AEAC) so that their constables can protect nuclear sites and nuclear

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material more effectively. They are now able to be deployed in all civil licensed nuclear sites, rather than at present only on premises of specified nuclear operators, and within five kilometres of such sites.

22. They also strengthen sanctions against the unauthorised disclosure of sensitive information on the security of nuclear sites, nuclear material and proliferation-sensitive nuclear technology.

Aviation security

23. **Part 9** improves enforcement of aviation security requirements and the ability of the police, Government Inspectors, and the aviation industry, to handle potentially dangerous situations at airports and on board aircraft. It includes provisions in respect of dealing with unauthorised persons in airports and on aircraft; enables the detention of aircraft if there are serious security concerns; introduces enabling legislation for the Secretary of State for Transport, Local Government & the Regions to “list” providers of aviation security services; and introduces a new offence of falsely claiming to be a security approved air cargo agent.
24. **Part 9** amends existing legislation, in particular the Aviation Security Act 1982, the Civil Aviation Act 1982 and the Police and Criminal Evidence Act 1984.

Police powers

25. In a small group of cases detainees in police custody will refuse to co-operate with the police as to their identity. Part 10 contains powers which give the police the authority to search for identifying marks, to take fingerprints of suspects solely for the purpose of identifying them and to photograph suspects and where necessary to demand the removal of facial coverings or face paint in order to take a positive photograph. It also strengthens police powers to require the removal of face coverings worn for the purpose of concealing identity and to seize any such items.
26. **Sections 98 to 101** and Schedule 7 allow the British Transport Police (“BTP”) to act outside their railways jurisdiction when asked to assist with a specific incident by a constable from the local police force, the UKAEA constabulary or a Ministry of Defence Police (“MDP”) officer, and in an emergency. The changes also give BTP officers certain powers available to local police officers, including powers under the Terrorism Act 2000 and powers to enter into mutual aid agreements with other forces.
27. Similarly, the MDP is now able to act outside Ministry of Defence land when asked to assist with a specific incident by a constable from the local police force, the BTP or the UKAEA constabulary, and in an emergency. The changes allow MDP to provide assistance, on request, to other forces, and extend to them certain powers in the Terrorism Act 2000.

Retention of communications data

28. **Part 11** contains provisions facilitating the retention by communications providers of data about their customers’ communications for national security purposes so that they can be accessed by the security, intelligence and law enforcement agencies by means of a statutory code of practice to be drawn up in consultation with industry and the Information Commissioner and approved by Parliament by affirmative resolution procedure.
29. The Act ensures that data which communications service providers would otherwise be obliged to erase when it is no longer needed for billing purposes may be retained if it is necessary to safeguard national security or to prevent, detect or prosecute crimes related to national security.
30. The Regulation of Investigatory Powers Act 2000 (Part 1, Chapter 2) sets out limits on the purposes for which the security, intelligence and law enforcement agencies

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may request access to data relating to specific communications. These provisions complement the 2000 Act by clarifying the lawful basis for the retention of data by communications service providers. They do not affect the access framework and safeguards set out in RIPA.

31. There is also a reserve power to review the voluntary arrangements under the code of practice and issue directions if necessary. If still needed, it must be renewed by an affirmative order every two years, unless the power is exercised.

Bribery and corruption

32. [Part 12](#) brings in provisions to strengthen the law on international corruption. The sections put beyond doubt that the law of bribery applies to acts involving officials of foreign public bodies, Ministers, MPs and judges; and to ‘agents’ (within the meaning of the 1906 Act) of foreign ‘principals’. They give courts jurisdiction over crimes of bribery committed by UK nationals and UK incorporated bodies overseas. There is also a technical provision, to ensure that the existing presumption of corruption in the Prevention of Corruption Act 1916, which it is intended to abolish, does not apply any more widely as a result of these new provisions.

Miscellaneous

33. Measures on police and criminal judicial co-operation agreed by the JHA Council of the EU (third pillar) can currently only be implemented in the UK by primary legislation. This section will enable specified measures, that are closely related to the EU's anti-terrorism action plan, to be implemented by secondary legislation by the affirmative resolution procedure. Measures agreed on European Community matters (for example the environment or the internal market) can already be implemented by secondary legislation.
34. [Part 13](#) also contains measures relating to the use or threatened use of noxious substances, (including biological agents or toxins, toxic chemicals or radioactive material) for terrorist and other similar purposes.
35. It introduces a new offence of hoaxing involving apparently noxious substances
36. Provisions amending the Intelligence Services Act 1994 introduce greater flexibility for intelligence gathering outside the British Islands and adapt the scope and definition of serious crime. They achieve this through extending the powers of GCHQ.
37. The Act reintroduces the offence of a general failure to disclose information about terrorism. Such an offence in relation to Northern Ireland was previously contained in the Prevention of Terrorism (Temporary Provisions) Act 1989 . The new provision will extend the provision to domestic and international terrorism.
38. The Act amends Schedule 7 to the Terrorism Act 2000 to include internal journeys. It equalises provisions to stop, detain and search people who journey internally with those travelling to and from the UK and Common Travel Area.
39. It gives a power to require carriers to supply information about passengers and freight to enforcement agencies and allow sharing between the agencies. Details of the information that carriers will be required to provide is to be decided in secondary legislation.

Supplemental

40. [Part 14](#) includes provision for review of the Act, for consequential and supplementary provision to be made by secondary legislation, and for the commencement and extent of the Act.