

PREVENTION OF TERRORISM ACT 2005

EXPLANATORY NOTES

SUMMARY

3. The purpose of this Act is to provide for the making of ‘control orders’ imposing obligations on individuals suspected of being involved in terrorism-related activity. These are preventative orders which are designed to restrict or prevent the further involvement by individuals in such activity.
4. A control order may impose any obligations necessary for purposes connected with preventing or restricting an individual’s further involvement in terrorism-related activity. The intention is that each order will be tailored to the particular risk posed by the individual concerned. Obligations that may be imposed include, for example, prohibitions on the possession or use of certain items, restrictions on movement to or within certain areas, restrictions on communications and associations, and requirements as to place of abode. It will be possible to make control orders against any individuals suspected of involvement in terrorism-related activity, irrespective of nationality, or terrorist cause.
5. Control orders that do not involve derogating from the European Convention on Human Rights (ECHR), called ‘non-derogating control orders’, will be made by the Secretary of State. The Secretary of State must seek permission from the court to make a non-derogating control order. However, in cases of urgency, the Secretary of State can make an order without first seeking the permission of the court but he must refer it immediately to the court for confirmation. Control orders that do involve derogating from the ECHR will be made by the court itself on application from the Secretary of State. Such control orders are called ‘derogating control orders’. All control orders will be subject to full hearings by the High Court or Court of Session. There will be a right of appeal on a point of law from a decision of the High Court or Court of Session.
6. Breach of an obligation imposed by a control order, without reasonable excuse, will be a criminal offence punishable, following conviction on indictment, with a prison sentence of up to 5 years, or a fine, or both; or, following summary conviction, to a prison sentence of up to 12 months (or 6 months in Scotland or Northern Ireland), or a fine, or both.
7. Features of the new scheme will include:
 - Supervision by the court of the making of non-derogating control orders;
 - Power of the court to make derogating control orders on application from the Secretary of State;
 - Control order proceedings involving the hearing of evidence in open and closed session with Special Advocates representing the interests of the individuals concerned in the latter;
 - The application of a judicial review test in hearings relating to non-derogating control orders;

*These notes refer to the Prevention of Terrorism Act 2005
(c.2) which received Royal Assent on 11 March 2005*

- the application of the civil standard of proof on the question of involvement in terrorism-related activity in hearings relating to derogating control orders;
- Independent review of the operation of the Act with the first review to be carried out after the Act has been in operation for nine months and subsequent reviews to be carried out annually;
- Reports by the Secretary of State to Parliament every three months on his exercise of the control order powers during that period;
- Where a derogation is in place which has been approved by Parliament, the need for further annual Parliamentary approval of the continuing need to rely on the derogation to make derogating control orders.