

# **PREVENTION OF TERRORISM ACT 2005**

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## **EXPLANATORY NOTES**

### **OVERVIEW**

8. The Act is arranged as follows:

#### ***Control orders***

9. [Sections 1 – 9](#) relate to the circumstances in which control orders may be made, their duration and the obligations (including penalties) attached to them.
10. This part of the Act describes the tests which the Secretary of State or court must apply in determining whether a control order may be made against an individual, and the obligations which may be imposed by the order. The Act provides an illustrative list of the obligations to which an individual may be subject and specifies penalties for failing, without reasonable excuse, to observe any obligations so imposed and for intentionally obstructing a person delivering a notice setting out the terms of the order.
11. The Act provides that the Secretary of State must obtain permission from the court before making a non-derogating control order. However, if a non-derogating control order has to be imposed urgently, the Secretary of State can make the order straight away but must refer it to the court immediately for the court to consider whether to confirm it. When considering whether to grant permission for a non-derogating control order to be made, and when considering whether to confirm a non-derogating control order that was made urgently, the court may hold an *ex parte* hearing and must consider whether the Secretary of State's decision in each case was obviously flawed. If it finds that it was, the order cannot be made or must be quashed; if it finds that it was not, the court must refer the control order to a full *inter partes* hearing which will apply a judicial review test to the control order in order to decide if it, and the obligations it imposes, should continue in force.
12. At a full hearing of a non-derogating order, the Court must consider whether any of the following decisions of the Secretary of State were flawed:
- his decision that there are reasonable grounds for suspecting that the person was involved in terrorism-related activity;
  - his decision that a control order is necessary for purposes connected with protecting members of the public from the risk of terrorism; and
  - his decisions on the imposition of each of the obligations imposed by the order.
13. The Act provides that the Secretary of State will apply to the court to make a derogating control order. At a preliminary hearing (which may be *ex parte*), the court will decide if there is a *prima facie* case for the order to be imposed. If it finds that there is not, it will not make the order; if it finds that there is, it will make the order and give directions for a full *inter partes* hearing to be held.
14. The court will confirm a derogating control order at a full hearing if:

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

- it is satisfied, on the balance of probabilities, that the controlled person is or has been involved in terrorism-related activity;
  - it considers that the obligations imposed as part of the control order are necessary for purposes connected with protecting members of the public from a risk of terrorism;
  - it appears to the court that the risk arises out of or is associated with a public emergency in respect of which there is a designated derogation from the whole or a part of Article 5 of the ECHR; and
  - the obligations imposed by the control order are in a list of derogating obligations set out in the designation order.
15. In full hearings on control orders, the court can quash the control order, modify the obligations which it imposes or, in the case of non-derogating control orders, give directions to the Secretary of State to revoke or modify the control order.
16. The Secretary of State or court (in the case of non-derogating and derogating control orders respectively) may revoke or modify an order at any time.
17. The Act lists the offences associated with breaching an order or obstructing those exercising statutory powers in relation to an order and the relevant penalties.

***Appeals and other proceedings***

18. [Sections 10-12](#) deal with appeals and other proceedings. A person subject to a non-derogating control order may appeal to the court against the following decisions of the Secretary of State:
- his decision to renew the control order;
  - his decision to modify the control order;
  - his decision not to revoke or modify the control order on an application from the controlled person.
19. These provisions set out the powers of the court on such appeals.
20. They also deal with the jurisdiction of the court in relation to control order decisions and derogation matters and the effect of the court's decisions on earlier convictions.

***Supplemental***

21. This part of the Act makes provision for the general oversight of the operation of the Act including independent annual review and three monthly reporting to Parliament on the exercise of his control order powers by the Secretary of State and annual renewal of the provisions.
22. It also contains general provisions concerning interpretation, repeals, commencement, the title of the Act and extent.