

PREVENTION OF TERRORISM ACT 2005

EXPLANATORY NOTES

COMMENTARY

Section 3: Supervision by court of making of non-derogating control orders

Subsection (1)

32. Subsection (1) provides that the Secretary of State can only make a non-derogating control order if:
- a) he has been granted permission to do so by the court;
 - b) he has made, and included in the control order, a statement saying that the urgency of the case required him to make the control order without permission from the court; or,
 - c) the order is made before 14 March 2005 against an individual who, at the time it is made, is certified under section 21(1) of the [Anti-terrorism, Crime and Security Act 2001 \(c. 24\)](#).

Subsections (2) to (4)

33. Subsection (2) provides that when the Secretary of State applies to the court for permission to make a non-derogating control order against an individual, the court must decide if the Secretary of State's decision that there are grounds to make the order is obviously flawed. If it determines that the decision is not obviously flawed it will give its permission for the order to be made, and give directions for a full hearing to take place to consider the order as soon as reasonably practicable after it is made. Subsection (3) says that if the Secretary of State makes a control order without permission from the court, he must refer it to the court immediately. Subsection (4) states that the court must begin considering such a reference not later than seven days after the day on which the control order was made.

Subsections (5), (6) and (8)

34. Subsection (5) provides that the first hearings in connection with non-derogating control orders, in which the court will decide whether to grant permission for the order to be made or will consider the Secretary of State's decision to impose the order without the court's permission, may be ex parte and may take place without the knowledge of the person upon whom the control order will be made. Subsection (6) explains that, in initial hearings on control orders made without the court's permission, the court will consider if the Secretary of State's decision to impose the order was obviously flawed. If it determines that the decision was obviously flawed, the court will quash the order; if it determines that it was not, but that the decision to impose a particular obligation was obviously flawed, it must quash that obligation; in all other cases, it must confirm the order and give directions for a full hearing in relation to the control order to take place. Subsection (8) provides that, in initial hearings on control orders made without the court's permission, the court may quash the certificate which the Secretary of State

included in the control order stating that the urgency of the case required that the order be made without first seeking permission from the court.

Subsection (7)

35. Subsection (7) provides that when the court gives directions for a full hearing in connection with a non-derogating control order to take place, it must make arrangements for the individual in question to be given an opportunity to make representations about the directions already given or the making of further directions, within seven days of the court's decision.

Subsections (10) and (11)

36. Subsection (10) explains that in a full hearing on a non-derogating control order, the court will determine whether any of the following decisions of the Secretary of State was flawed:
- a) his decision that he had reasonable grounds for suspecting that the controlled person was or had been involved in terrorism-related activity and his decision that the control order was necessary for purposes connected with protecting members of the public from a risk of terrorism;
 - b) his decision to impose each of the obligations in the control order.
37. Subsection (11) states that in considering the matters coming before it in relation to non-derogating control orders, the court must apply the principles applicable on an application for judicial review.

Subsections (12) to (14)

38. Subsections (12) and (13) explain that, in a full hearing on a non-derogating control order, if the court decides that a decision of the Secretary of State was flawed, it may:
- a) quash the control order;
 - b) quash one or more of the obligations contained in the control order;
 - c) give directions to the Secretary of State for him to revoke or modify the order;
 - d) decide that the control order should continue in force.
39. Subsection (14) provides that the court must discontinue the full hearing on a non-derogating control order if requested to do so by the controlled person.