

# PREVENTION OF TERRORISM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY

#### *Section 4: Power of the court to make derogating control orders*

##### **Subsections (1) to (4)**

40. Subsection (1) provides for the court to hold an immediate preliminary hearing on an application from the Secretary of State to decide whether to make a derogating control order against an individual. If it determines to make such an order, it is required to give directions for a full hearing to take place to determine whether to confirm the order, with or without modifications.
41. Subsection (2) states that the preliminary hearing may be ex parte and may take place without the knowledge of the person upon whom the control order will be made.
42. Subsection (3) sets out the tests which the court must consider when deciding if a derogating control order can be made. It must appear to the court that:
  - a) there is material which (if not disproved) is capable of being relied on by the court as establishing that the individual is or has been involved in terrorism-related activity.
  - b) there are reasonable grounds for believing that the obligations in the control order are necessary for purposes connected with protecting members of the public from a risk of terrorism.
  - c) the risk in question arises out of or is associated with a public emergency in respect of which there is a designated derogation from all or part of Article 5 of the ECHR.
  - d) that the obligations in the control order are of a description set out in the designation order.
43. Subsection (4) provides that the obligations the court may impose between the time when the order is made and the time when the court makes its determination at the full hearing include any obligations which it has reasonable grounds for believing to be necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity.

##### **Subsection (5) to (7)**

44. Subsection (5) provides that, at a full hearing on a derogating control order, the court may confirm or revoke the control order. If it revokes the order, it may direct that the order be treated as having been quashed under the terms of this Act. Subsection (6) states that, when confirming a derogating control order, the court may modify the obligations imposed by the order and direct that the obligation be treated as having been quashed under the terms of this Act.

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

45. Subsection (7) explains the tests which the court must apply when considering whether to confirm a derogating control order at a full hearing. It can only confirm the order if:
- a) it is satisfied on the balance of probabilities that the person is or has been involved in terrorism-related activities;
  - b) it considers that the imposition of a control order is necessary for purposes connected with protecting members of the public from a risk of terrorism;
  - c) 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 all or part of Article 5; and
  - d) the obligation(s) are of a description set out in the designation order.

**Subsections (8) to (13)**

46. Subsection (8) provides that a derogating control order will last six months, unless it ceases to have effect either because it is revoked or because it would otherwise continue beyond the period provided for in section 6 (ie there has been no order within the relevant period confirming that it continues to be necessary for the Secretary of State to have the power to impose derogating obligations) It can also continue for more than six months if the court renews it. The renewal procedure is described in subsection (9).
47. As subsection (10) explains, when the court is considering whether to renew a derogating control order on an application from the Secretary of State, it may only do so if:
- a) the court considers that it is necessary for the derogating control order to continue in force for purposes connected with protecting members of the public from a risk of terrorism;
  - b) 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 all or part of Article 5 ECHR;
  - c) the obligations are of a description that continues to be set out in a designation order; and,
  - d) the court considers that the obligations imposed in the renewed order are necessary for purposes connected with preventing or restricting the controlled person's involvement in terrorism-related activity.
48. Subsection (11) provides that the court may extend a control order in order to allow it to continue to operate while proceedings on an application for renewal take place. Subsection (12) notes that if a control order is extended under subsection (11) the renewed control order will be valid for six months from the date at which the order would have ceased to have effect.
49. Subsection (13) states that obligations may be imposed as part of a control order in order to prevent involvement in any terrorism-related activity, not just the activity which led the court to conclude that the individual was or had been involved in terrorism-related activity.