

# PREVENTION OF TERRORISM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY

#### *Section 5: Arrest and detention pending derogating control order*

##### **Subsections (1) to (6)**

50. Subsections (1) to (4) provide for the arrest and detention of an individual in respect of whom the Secretary of State is seeking a derogating control order. He may be arrested and detained for 48 hours in the first instance, with the possibility of the court extending the detention for a further 48 hours. A constable may arrest someone under this section if the Secretary of State has applied to the court for a derogating control order to be made and the constable considers that the individual's arrest and detention are necessary to ensure the individual is able to receive notice of the order when it is made. The constable must take the arrested individual to an appropriate "designated place" (as defined in Paragraph 1(1) of Schedule 8 to the Terrorism Act 2000). If it considers it necessary to ensure that the individual is available to receive any notice, the court may during the first 48 hours of such detention, extend the period of detention for up to a further 48 hours. Subsection (5) provides that the power of detention shall cease once a person becomes bound by a derogating control order (ie once it has been served) or once the court dismisses the application from the Secretary of State. Subsection (6) provides that an individual who has the powers of a constable in one part of the UK can exercise the power of arrest under this section in any part of the UK.

##### **Subsections (7), (8) and (10)**

51. Subsection (7) provides that an individual detained under section 5 will be deemed to be in 'police detention' under the [Police and Criminal Evidence Act 1984 \(c. 60\)](#) for England and Wales, and the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(N. I. 12\)](#) for Northern Ireland. Subsection (8) applies certain provisions of Schedule 8 to the [Terrorism Act 2000 \(c. 11\)](#) to the individual with appropriate adjustments. Subsection (10) states that a 'designated place' is a place designated under paragraph 1(1) of Schedule 8 to the Terrorism Act 2000.

##### **Subsection (9)**

52. Subsection (9) states that detention under this section may be incompatible with the right to liberty under Article 5 ECHR if there is a designated derogation in connection with these powers, and the derogation in connection with these powers arises from the same public emergency as the derogation in connection with derogating control orders.