

TERRORISM ACT 2006

EXPLANATORY NOTES

COMMENTARY

Definitions

Schedule 2 – Seizure and forfeiture of terrorist publications

134. **Schedule 2** sets out the procedure for forfeiture of terrorist publications seized under section 28 of this Act. Schedule 2 is closely based on the forfeiture provisions in Schedule 3 to the [Customs and Excise Management Act 1979 \(c.2\)](#).

Paragraph 2

135. **Paragraph 2** sets out that notice must be given by the constable responsible for the seizure to every person whom he believes to be the owner of any article seized. If there is no such person, or it is not reasonably practical for such notice to be given, it should be given to the person the constable believes is the occupier of the premises where the article was seized. The notice must set out what has been seized, and the grounds for seizure. Only if a notice has been properly given under paragraph 1 or it was not reasonably practicable to comply with paragraph 1 can an article be forfeited (sub-paragraph (5)). Sub-paragraphs (3), (4) and (6) further set out requirements about the manner in which the notice must be given.

Paragraphs 3 and 4

136. These paragraphs set out that a person claiming that any seized article is not liable to forfeiture may give notice of such a claim to a constable at any police station in the police area in which the seizure took place. Such a notice, which must be given in writing, must be given within one month of the notice of the seizure, or the seizure itself if no notice has been given.

Paragraph 5

137. **Paragraph 5** provides that forfeiture is automatic if no claim is made under paragraphs 3 and 4 within the time for making a claim under those paragraphs (one month), or if an attempt is made to make a claim but the requirements of 3 and 4 are not complied with.

Paragraph 6

138. **Paragraph 6** provides for forfeiture by the court in cases where a claim is made. When a notice claiming that an article seized is not liable to forfeiture has been received, the relevant constable must decide whether to take proceedings to ask the court to condemn the article as forfeited. This decision should be taken as soon as reasonably practicable following the notice of the claim. For the court to order the condemnation of an article to forfeiture, it must be satisfied of two matters: firstly, that the item was liable for forfeiture when seized, and secondly, that its forfeiture would not be inappropriate. If the court is not satisfied that these tests have been met, it must order the return of the item to the person it believes is entitled to it. If the constable decides not to take proceedings

for condemnation, then the constable must return the article to the person who appears to be the owner of it as soon as reasonably practicable following the decision not to take proceedings for condemnation.

Paragraphs 7 to 11

139. These paragraphs set out the procedure for forfeiture proceedings in court. These proceedings will be civil proceedings. **Paragraph 7** sets out the courts in which such proceedings may be instituted. **Paragraph 8** states that such proceedings may only be instituted in a magistrates' court, the sheriff court or a court of summary jurisdiction if it has jurisdiction in relation to the place where the article to which they relate was seized. **Paragraph 10** sets out the procedure for appeals against decisions of summary jurisdiction courts to higher courts. **Paragraph 11** sets out that for the duration of any appeal the seized items will remain in the possession of the constable who seized them.

Paragraphs 12 to 17

140. **Paragraph 12** sets out that if an article is condemned as forfeited by the court, it will be deemed to have been forfeited from the time of the seizure. If 12 months after a requirement to return property arises an article that should have been returned is still with a constable and it is not reasonably practicable for it to be returned the constable can dispose of it (**paragraph 13**). **Paragraphs 14 and 15** set out provisions of proof, detailing that the fact, form and manner of seizure is to be assumed to have been by the process set out in this Act, unless the contrary is shown. They also detail how the condemnation of an article as forfeited may be proved. **Paragraph 16** sets out special provisions for the property of a body corporate, two or more partners, and more than five persons. **Paragraph 17** provides that the returning of an item to a person in line with requirements in this Schedule does not affect the rights of any other person in respect of that article. This ensures that property and ownership rights in an article are not affected by its return to a particular individual.

Section 29 – Power to search vehicles under Schedule 7 to the Terrorism Act 2000 (c.11)

141. This section extends paragraph 8(1) of Schedule 7 to the TACT to allow an examining officer (i.e. a constable, an immigration officer or a customs officer) to search a vehicle at a port which is on a ship or aircraft, or which the examining officer reasonably believes has been or is about to be on a ship or aircraft for the purposes of determining whether a person the examining officer is questioning under paragraph 2 of Schedule 7 falls within section 40(1)(b) of the TACT. A person falls within section 40(1)(b) of the TACT if he is or has been concerned in the commission, preparation or instigation of acts of terrorism. At the moment an examining officer does not have the power to search vehicles in these circumstances, even though he does have the power to search vehicles in the Northern Ireland border area (see paragraph 8(2) of Schedule 7). The definition of vehicle in section 121 of the TACT (which provides that "vehicle" includes an aircraft, hovercraft, train or vessel) does not extend to Schedule 7.

Section 30 – Extension to internal waters of authorisations to stop and search

142. This section amends sections 44 and 45 of the TACT. Section 44 provides that an authorisation may be given for a particular police area or part of a police area and under the authorisation a constable may stop a vehicle in the area and search the vehicle, the driver of the vehicle, a passenger in the vehicle and anything on or in the vehicle or carried by the driver or a passenger. **Subsection (2)** adds a new subsection to section 44 to enable an authorisation under section 44 to include internal waters adjacent to any area or place specified under section 44(4) or part of such internal waters. **Subsections (3) and (4)** make amendments to sections 44 and 45 to ensure that "driver" in those sections makes sense in the context of a vehicle which is not a car. "Driver" is defined in Section 52 of the TACT as including the person who was driving the vehicle when

it was left on a road, if it was left on a road. Under section 45 a constable may seize an article found during a search under section 44.

Section 31 – Amendment of the Intelligence Services Act 1994 (c.13)

143. **Section 31** makes amendments to the ISA in relation to the powers of the security and intelligence services with respect to warrants to carry out acts both overseas and in the UK.

Subsection (2)

144. **Subsection (2)** grants the Secretary of State the power to nominate specified senior officials who will then be entitled in urgent cases to authorise warrants under section 5 of the ISA (warrants authorising actions of the security and intelligence services).

Subsection (3)

145. **Subsection (3)** provides that such warrants issued by the senior officials nominated by the Secretary of State may only authorise actions that would, if done outside the British Islands, be covered by a current authorisation issued by a Secretary of State under section 7 of the ISA (authorisations of acts outside the British Islands). It further provides that the person issuing any such warrant must inform the Secretary of State as soon as practicable after such a warrant is issued.

Subsection (4)

146. **Subsection (4)** amends the duration for which warrants issued by senior officials may last from two to five working days.

Subsection (5)

147. **Subsection (5)** amends the duration for which authorisations issued by senior officials under section 7 of the ISA may last from two to five working days. These warrants relate to the authorisation of actions outside the British Islands that would otherwise be contrary to UK law.

Subsection (6)

148. **Subsection (6)** adds a provision to section 7 of the ISA that actions carried out in relation to property overseas that have been authorised by the Secretary of State under that section, and that are capable of being authorised by a warrant under Section 5, may continue after a certain change of circumstances for up to five working days. These changes of circumstances are the discovery that the property to which the actions relate was actually in the British Islands, when it was previously believed that it was outside, or the discovery that the target had been brought into the British Islands. The period of five working days is deemed to have begun at the point that it first appears to a member of the Intelligence Service, or to GCHQ, that a change of circumstances has occurred.

Section 32 – Interception warrants

149. **Section 32** makes amendments to the provisions concerning the duration and modification of, and safeguards attached to, interception warrants issued pursuant to Part 1 of RIPA.
150. **Subsection (2)** amends section 9(6) of RIPA, bringing into line the duration of the initial interception warrant issued in the interests of national security or for the purpose of safeguarding the economic wellbeing of the United Kingdom with the duration of any such warrant when renewed. Previously, these warrants lasted only for three months when first issued, but could be renewed for a six month period. This amendment

provides that both initial and renewed warrants will now last for a maximum of 6 months.

151. **Subsections (3) and (4)** amend section 10 of RIPA, to allow modifications of the schedules of an intercept warrant, issued in the interests of national security, to be made by a senior official who is either the person to whom it is addressed, or one of their subordinates. Such modifications cease to have effect at the end of the fifth working day.
152. **Subsections (5), (6) and (7)** amend section 16 of RIPA, which provides extra safeguards in the case of warrants to which section 8(4) certificates apply. One of these safeguards is a general prohibition on examining material intercepted under such warrants selected by reference to an individual who is known to be for the time being in the British Islands or by a factor which has as its purpose the identification of material contained in communications to or from such an individual. However, section 16(3) of RIPA allows such selection, provided certain conditions are met. One of those conditions is that the material relates only to communications sent during the period specified in the section 8(4) certificate, such period having a maximum of 3 months. **Subsections (5) (a) and (6)** make amendments such that, in cases where the section 8(4) certification has been issued in the interests of national security, that maximum period is increased from 3 to 6 months.
153. Section 16(5) of RIPA further allows such selection where there has been a change of circumstances which would otherwise mean that selection for examination would no longer be possible because an individual is found to have entered the British Islands. Selection can only continue pursuant to this provision for one working day after the day on which the change of circumstances became apparent. **Subsections (5)(b) and (7)** make amendments such that, in cases where the section 8(4) certification has been issued in the interests of national security, that period is increased from one to five working days.

Section 33 – Disclosure notices for the purposes of terrorist investigations

154. This section extends the regime contained in Part 2, chapter 1 of the SOCAP under which a disclosure notice may be issued by the Investigating Authority, requiring those on whom such a notice is served to provide specific information as set out in the notice. Refusal to provide information is an offence, punishable by imprisonment for up to 51 weeks, or a fine. Providing false or misleading information is an offence, punishable by imprisonment for up to two years, or a fine, or both. The Investigating Authority is defined as the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions, or the Lord Advocate.

Subsections (1) and (2)

155. **Subsection (1)** amends section 60(1) of the SOCAP to extend the powers of the Investigating Authority to enable the issuing of disclosure notices in terrorist investigations. At the moment a disclosure notice can only be issued in connection with the investigation of specific offences. **Subsection (2)** inserts a definition of terrorist investigation into section 60 of the SOCAP.

Subsection (3)

156. **Subsection (3)** amends section 62 of the SOCAP to provide that a disclosure notice may be given where the Investigating Authority believes that a person has information that relates to a terrorist investigation. There must also be reasonable grounds for believing both that the person to whom the notice is issued has relevant information and that any information provided is likely to be of substantial value to that investigation.

Subsection (4)

157. **Subsection (4)** inserts definitions of “act of terrorism”, “terrorism”, and “terrorist investigation”, into section 70 of the SOCAP for the purpose of the disclosure notice provisions. The first two of these terms are defined by reference to the TACT. The definition of terrorism and act of terrorism are discussed at paragraphs 16-19 of these explanatory notes. The definition of terrorist investigation is set out in section 60(7) of the SOCAP (as inserted by subsection (2) of this section). The definition covers the investigation of the commission, preparation or instigation of acts of terrorism, the investigation of acts or omissions that appear to be carried out for the purposes of terrorism and which consist of the commission, preparation or instigation of an offence and the investigation of an offence under the TACT or Part 1 of this Act (except an offence under section 1 (encouragement of terrorism) or section 2 (dissemination of terrorist publications)).

Section 34 – Amendment of the definition of “terrorism” etc.

158. This section amends two definitions. These amendments are required to eliminate the disparity between definitions of terrorism in UK law and the equivalent definitions in various international Conventions which the UK aims to implement. Examples of international agreements in which the disparity exists are the EU Framework Decision of 13 June 2002 on Combating Terrorism, and the International Convention for the Suppression of Acts of Terrorism. These Conventions allow for actions to be termed as terrorist if, among other tests, the use or threat of action is designed to influence international governmental organisations (such as the United Nations), in addition to State parties’ governments.

159. The section amends the definition of “terrorism”, in section 1 of the TACT to include the carrying out of acts where the use or threat is designed to influence an international governmental organisation. The new definition, as amended will read:

- “1(1) In this Act "terrorism" means the use or threat of action where-
- (a) the action falls within subsection (2),
 - (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
 - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this subsection if it-
- (a) involves serious violence against a person,
 - (b) involves serious damage to property,
 - (c) endangers a person's life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.”

Secondly, the section amends section 113 of the ATCSA in a similar way. Section 113 makes it an offence to use noxious substances in a way likely to cause violence against a person, serious damage to property or to endanger life or to make members of the public fear their life is endangered. The action must be designed to intimidate the public or to influence a government. The amendment extends to this to international governmental organisations.

Section 35 – Applications for extended detention of seized cash

160. This section amends Schedule 1 to the ATCSA. That Schedule makes provision for the forfeiture of terrorist cash. Under paragraph 2 of the Schedule an authorised officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash. Terrorist cash means cash that is intended to be used for terrorist purposes, cash which consists of resources of a proscribed organisation and property that is earmarked as terrorist property.
161. Once terrorist cash has been seized paragraph 3 of the Schedule governs the length of time it can be detained. Initially the cash can be detained for 48 hours after which the authorised officer must apply to a Magistrates' Court (or in Scotland a sheriff) to extend the period of detention. The first application for extension can also be made, outside Scotland, to a justice of the peace (paragraph 3(3)). This section adds a new subparagraph to paragraph 3 that provides that if the first application for extension of detention of terrorist cash is made to a justice of the peace (or the sheriff, in the case of Scotland) it can be heard without notice being given to the person affected by the order or that person's legal representative and can be heard in private in the absence of the affected person and his legal representative. The person affected will have the opportunity to challenge the making of the order at a later date because he will be served with a copy of it (paragraph 3(4)) and can apply for it to be discharged (paragraph 5). **Subsection (2)** provides that this amendment will not be retrospective, and may only be applied to applications to extend detention of seized cash made after the commencement of this section.