

TERRORISM ACT 2006

EXPLANATORY NOTES

COMMENTARY

Definitions

Section 3 – Application of sections 1 and 2 to internet activity etc.

39. Under sections 1 and 2 a person has a defence to the offences in those sections if he can show amongst other things that a statement or publication did not express his views and did not have his endorsement (see sections 1(6) and 2(9)). The effect of section 3 is to deem a person providing or using an electronic service to have endorsed a statement if he has received a notice under section 3 and he has failed to comply with it. If the person is accused of an offence under section 1 or 2 then the effect of section 3 is that he cannot take advantage of the defence in sections 1(6), or 2(9) respectively.
40. **Section 3** contains a number of references to “publishing”, “records”, “article” and “statement”, the definitions of which are contained in section 20 (Interpretation of Part 1).

Subsection (1)

41. **Subsection (1)** applies the section to services provided electronically. Subsection (1) (a) relates to statements that are published under section 1. Subsection (1)(b) relates to conduct that amounts to an offence under section 2. In both cases the publishing or conduct that amounts to the offence must occur in the course of, or in connection with the provision or use of an electronic service.

Subsection (2)

42. **Subsection (2)** provides that any statement or conduct in question is regarded as having the endorsement of a person if he has been given a notice under **subsection (3)**, two working days or more have elapsed since the notice was given, and the relevant person has failed without a reasonable excuse to comply with the notice. The final part of this test specifically provides that if a person has a good reason for not complying with the notice he will not be caught by section 3.

Subsection (3)

43. **Subsection (3)** relates to the form of a notice under section 3. A notice can only be given by a constable and that constable must have formed the opinion that the statement, article or record concerned is unlawfully terrorism-related. Those things are unlawfully terrorism-related if they are likely to be understood as a direct or indirect encouragement or other inducement to acts of terrorism, or Convention offences, by any one or more of the persons to whom it is or may become available; or if the article or record contains information that is likely to be useful to any one or more of those persons in the commission or preparation of acts of terrorism, and is in a form or context as may be likely to be understood by those persons as being wholly or mainly for such a purpose (**subsection (7)**). As in sections 1 and 2, **subsection (8)** provides that indirect

encouragement of terrorism includes glorification of terrorism, but only if it can be understood as a suggestion that what is being glorified is glorified as conduct to be emulated in existing circumstances.

44. A notice issued under this section must declare that the statement, article, or record in question is unlawfully terrorism-related in the opinion of the constable. The notice must require the relevant person (for example, a webmaster) to ensure that the statement, article or record is removed from public view or amended to ensure that it is no longer unlawfully terrorism-related. The notice must warn the person that he has two working days to comply with the notice, and that failure to do so will lead to that person being regarded as having endorsed the statement, article or record. Working day is defined in **subsection (9)** as any day that is not a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday within the meaning of the [Banking and Financial Dealings Act 1971 \(c. 80\)](#) in any part of the UK. This final part of the definition means that a bank holiday in any part of the UK will not be a working day for the purposes of the provisions in any part of the UK. The notice must also explain how the relevant person may be liable if the statement, article or record becomes available to the public again, following compliance with the notice. This final element relates to repeat statements which are covered in subsections (4) to (6).

Subsections (4) to (6)

45. **Subsections (4), (5) and (6)** deal with the situation in which a person is given a notice, he takes down the offending statement and then another statement that is the same or very similar is posted again. These are referred to as repeat statements. In such a situation it may be difficult to tell if the statement is the statement to which the notice relates or a new one. A mechanism is needed to ensure that a person is only liable for statements that he knows about. **Subsection (4)** provides that the person against whom the notice was issued will be regarded as having endorsed repeat statements but this is subject to subsections (5) and (6). **Subsections (5) and (6)** provide that a person is not deemed to endorse a repeat statement if he has taken every reasonable step to prevent repeat statements becoming available to the public, and he has taken every reasonable step to ascertain if a repeat statement is available to the public; and he is not aware that the repeat statement had been published or he was aware that it had been published but he has taken every reasonable step to ensure it is removed or modified.