



# Counter-Terrorism Act 2008

## 2008 CHAPTER 28

An Act to confer further powers to gather and share information for counter-terrorism and other purposes; to make further provision about the detention and questioning of terrorist suspects and the prosecution and punishment of terrorist offences; to impose notification requirements on persons convicted of such offences; to confer further powers to act against terrorist financing, money laundering and certain other activities; to provide for review of certain Treasury decisions and about evidence in, and other matters connected with, review proceedings; to amend the law relating to inquiries; to amend the definition of “terrorism”; to amend the enactments relating to terrorist offences, control orders and the forfeiture of terrorist cash; to provide for recovering the costs of policing at certain gas facilities; to amend provisions about the appointment of special advocates in Northern Ireland; and for connected purposes.

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[26th November 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1 Act modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), art. 3, [Sch.](#)

**Status:** Point in time view as at 26/11/2008. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Counter-Terrorism Act 2008 is up to date with all changes known to be in force on or before 13 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 24/12/2008

## PART 1

### POWERS TO GATHER AND SHARE INFORMATION

PROSPECTIVE

#### *Power to remove documents for examination*

#### **1 Power to remove documents for examination**

- (1) This section applies to a search under any of the following provisions—
- (a) section 43(1) of the Terrorism Act 2000 (c. 11) (search of suspected terrorist);
  - (b) section 43(2) of that Act (search of person arrested under section 41 on suspicion of being a terrorist);
  - [<sup>F1</sup>(ba) section 43(4B) of that Act (search of vehicle in relation to suspected terrorist);
  - (bb) section 43A of that Act (search of vehicle suspected of being used for the purposes of terrorism);]
  - [<sup>F2</sup>(bc) section 43C(1) of that Act (search of terrorist offender released on licence);
  - (bd) section 43C(5) of that Act (search of vehicle in connection with search of terrorist offender released on licence);
  - (be) section 43D of that Act (search of premises of offender released on licence for purposes connected with protection from risk of terrorism);]
  - (c) paragraph 1, 3, 11, 15, 28 or 31 of Schedule 5 to that Act (terrorist investigations);
  - (d) section 52(1) or (3)(b) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (search for evidence of commission of weapons-related offences);
  - [<sup>F3</sup>(e) .....
  - (f) section 28 of the Terrorism Act 2006 (c. 11) (search for terrorist publications).
  - [<sup>F4</sup>(g) paragraphs 6, 7, 8 or 10 of Schedule 5 to the Terrorism Prevention and Investigation Measures Act 2011.]
- (2) A constable who carries out a search to which this section applies may, for the purpose of ascertaining whether a document is one that may be seized, remove the document to another place for examination and retain it there until the examination is completed.
- (3) Where a constable carrying out a search to which this section applies has power to remove a document by virtue of this section, and the document—
- (a) consists of information that is stored in electronic form, and
  - (b) is accessible from the premises being searched,
- the constable may require the document to be produced in a form in which it can be taken away, and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

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- (4) A constable has the same powers of seizure in relation to a document removed under this section as the constable would have if it had not been removed (and if anything discovered on examination after removal had been discovered without it having been removed).

#### Textual Amendments

- F1** S. 1(1)(ba)(bb) inserted (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 33](#) (with [s. 97](#)); [S.I. 2012/1205, art. 4\(k\)](#)
- F2** S. 1(1)(bc)-(be) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\), s. 208\(5\)\(w\), Sch. 19 para. 3](#)
- F3** S. 1(1)(e) omitted (15.12.2011) by virtue of [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\), s. 31\(2\), Sch. 7 para. 5\(2\)\(a\)](#) (with [Sch. 8](#))
- F4** S. 1(1)(g) inserted (15.12.2011) by [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\), s. 31\(2\), Sch. 7 para. 5\(2\)\(b\)](#) (with [Sch. 8](#))

## 2 Offence of obstruction

- (1) A person who wilfully obstructs a constable in the exercise of the power conferred by section 1 commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale, or both;
  - (b) in Scotland, to imprisonment for a term not exceeding twelve months or a fine not exceeding level 5 on the standard scale, or both;
  - (c) in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (3) In subsection (2)(a) as it applies in relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 (c. 44) comes into force, for “51 weeks” substitute “six months”.

## 3 Items subject to legal privilege

- (1) Section 1 does not authorise a constable to remove a document if the constable has reasonable cause to believe—
- (a) it is an item subject to legal privilege, or
  - (b) it has an item subject to legal privilege comprised in it.
- (2) Subsection (1)(b) does not prevent the removal of a document if it is not reasonably practicable for the item subject to legal privilege to be separated from the rest of the document without prejudicing any use of the rest of the document that would be lawful if it were subsequently seized.
- (3) If, after a document has been removed under section 1, it is discovered that—
- (a) it is an item subject to legal privilege, or
  - (b) it has an item subject to legal privilege comprised in it,
- the document must be returned forthwith.

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- (4) Subsection (3)(b) does not require the return of a document if it is not reasonably practicable for the item subject to legal privilege to be separated from the rest of the document without prejudicing any use of the rest of the document that would be lawful if it were subsequently seized.
- (5) Where an item subject to legal privilege is removed under subsection (2) or retained under subsection (4), it must not be examined or put to any other use except to the extent necessary for facilitating the examination of the rest of the document.
- (6) For the purposes of this section “item subject to legal privilege”—
  - (a) in England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60);
  - (b) in Scotland, has the meaning given by section 412 of the Proceeds of Crime Act 2002 (c. 29);
  - (c) in Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

#### **4 Record of removal**

- (1) A constable who removes a document under section 1 must make a written record of the removal.
- (2) The record must be made as soon as is reasonably practicable and in any event within the period of 24 hours beginning with the time when the document was removed.
- (3) The record must—
  - (a) describe the document,
  - (b) specify the object of the removal,
  - (c) where the document was found in the course of a search of a person, state the person's name (if known),
  - (d) where the document was found in the course of a search of any premises, state the address of the premises where the document was found,
  - (e) where the document was found in the course of a search of any premises, state the name (if known) of—
    - (i) any person who, when the record is made, appears to the constable to have been the occupier of the premises when the document was found, and
    - (ii) any person who, when the record is made, appears to the constable to have had custody or control of the document when it was found, and
  - (f) state the date and time when the document was removed.
- (4) If, in a case where the document was found in the course of a search of a person, the constable does not know the person's name, the record must include a description of the person.
- (5) If, in a case where the document was found in the course of a search of any premises, the constable does not know the name of a person mentioned in subsection (3)(e) but is able to provide a description of that person, the record must include such a description.
- (6) The record must identify the constable by reference to the constable's police number.

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- (7) The following are entitled, on a request made to the constable, to a copy of the record made under this section—
- (a) where the document was found in the course of a search of a person, that person; and
  - (b) where the document was found in the course of a search of any premises—
    - (i) the occupier of the premises when it was found, and
    - (ii) any person who had custody or control of the document when it was found.
- (8) The constable must provide the copy within a reasonable time from the making of the request.
- (9) If, in England and Wales or Northern Ireland, the document is found in the course of a search under a warrant, the constable must make an endorsement on the warrant stating that the document has been removed under section 1.
- (10) In the application of this section in relation to the search of a vehicle, the reference to the address of the premises is to the location of the vehicle together with its registration number (if any).

## **5 Retention of documents**

- (1) A document may not be retained by virtue of section 1 for more than 48 hours without further authorisation.
- (2) A constable of at least the rank of chief inspector may authorise the retention of the document for a further period or periods if satisfied that—
- (a) the examination of the document is being carried out expeditiously, and
  - (b) it is necessary to continue the examination for the purpose of ascertaining whether the document is one that may be seized.
- (3) This does not permit the retention of a document after the end of the period of 96 hours beginning with the time when it was removed for examination.

## **6 Access to documents**

- (1) Where—
- (a) a document is retained by virtue of section 5, and
  - (b) a request for access to the document is made to the officer in charge of the investigation by a person within subsection (3),
- the officer must grant that person access to the document, under the supervision of a constable, subject to subsection (4).
- (2) Where—
- (a) a document is retained by virtue of section 5, and
  - (b) a request for a copy of the document is made to the officer in charge of the investigation by a person within subsection (3),
- that person must be provided with a copy of the document within a reasonable time from the making of the request, subject to subsection (4).
- (3) The persons entitled to make a request under subsection (1) or (2) are—

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- (a) where the document was found in the course of a search of a person, that person,
  - (b) where the document was found in the course of a search of any premises—
    - (i) the occupier of the premises when it was found, and
    - (ii) any person who had custody or control of the document when it was found, and
  - (c) a person acting on behalf of a person within paragraph (a) or (b).
- (4) The officer in charge of the investigation may refuse access to the document, or (as the case may be) refuse to provide a copy of it, if the officer has reasonable grounds for believing that to do so—
- (a) would prejudice any investigation for the purposes of which—
    - (i) the original search was carried out, or
    - (ii) the document was removed or is being retained,
  - (b) would prejudice the investigation of any offence,
  - (c) would prejudice any criminal proceedings that may be brought as the result of an investigation within paragraph (a) or (b), or
  - (d) would facilitate the commission of an offence.
- (5) In this section—
- “the officer in charge of the investigation” means the officer in charge of the investigation for the purposes of which the document is being retained; and
  - “the original search” means the search in the course of which the document was removed.

## **7 Photographing and copying of documents**

- (1) Where a document is removed under section 1 it must not be photographed or copied, except that—
- (a) a document may be copied for the purpose of providing a copy in response to a request under section 6(2), and
  - (b) a document consisting of information stored in electronic form may be copied for the purpose of producing it in a visible and legible form.
- (2) Where the original document is returned, any copy under subsection (1)(b) must—
- (a) in the case of a copy in electronic form, be destroyed or made inaccessible as soon as is reasonably practicable, and
  - (b) in any other case, be returned at the same time as the original document is returned.
- (3) The following are entitled, on a request made to the relevant chief officer of police, to a certificate that subsection (2) has been complied with—
- (a) where the document was found in the course of a search of a person, that person;
  - (b) where the document was found in the course of a search of any premises—
    - (i) the occupier of the premises when it was found, and
    - (ii) any person who had custody or control of the document when it was found.

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- (4) The certificate must be issued by the relevant chief officer of police, or a person authorised by or on behalf of that chief officer, not later than the end of the period of three months beginning with the day on which the request is made.
- (5) For this purpose the relevant chief officer of police is—
  - (a) where the search was carried out in England or Wales, the chief officer of police in whose area the search was carried out;
  - (b) where the search was carried out in Scotland, the chief constable of the [<sup>F5</sup>Police Service of Scotland];
  - (c) where the search was carried out in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.

#### Textual Amendments

- F5** Words in s. 7(5)(b) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), [Sch. 2 para. 60\(2\)](#)

## 8 Return of documents

- (1) Where a document removed under section 1 is required to be returned, it must be returned—
  - (a) where the document was found in the course of a search of a person, to that person;
  - (b) where the document was found in the course of a search of any premises, to the occupier of the premises when it was found.
- (2) Subsection (1) does not apply where a person who is required to return the document is satisfied that another person has a better right to it; and in such a case it must be returned—
  - (a) to that other person, or
  - (b) to whoever appears to the person required to return the document to have the best right to it.
- (3) Where different persons claim to be entitled to the return of the document, it may be retained for as long as is reasonably necessary for the determination of the person to whom it must be returned.
- (4) This section also applies in relation to a copy of a document that is required to be returned at the same time as the original; and in such a case references to the document in paragraphs (a) and (b) of subsection (1) are to the original.

## 9 Power to remove documents: supplementary provisions

- (1) In sections 1 to 8 “document” includes any record and, in particular, includes information stored in electronic form.
- (2) In the application of those sections to a search under 52(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24), for references to a constable substitute references to an authorised officer within the meaning of that section.

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(3) In the application of those sections in relation to the search of a vehicle references to the occupier of the premises are to the person in charge of the vehicle.

PROSPECTIVE

*Power to take fingerprints and samples from person subject to control order*

**F6 10 Power to take fingerprints and samples: England and Wales**

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**Textual Amendments**

**F6** Ss. 10-13 omitted (15.12.2011) by virtue of [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), s. 31(2), [Sch. 7 para. 5\(3\)](#) (with Sch. 8)

**F6 11 Power to take fingerprints and samples: Scotland**

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**Textual Amendments**

**F6** Ss. 10-13 omitted (15.12.2011) by virtue of [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), s. 31(2), [Sch. 7 para. 5\(3\)](#) (with Sch. 8)

**F6 12 Power to take fingerprints and samples: Northern Ireland**

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**Textual Amendments**

**F6** Ss. 10-13 omitted (15.12.2011) by virtue of [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), s. 31(2), [Sch. 7 para. 5\(3\)](#) (with Sch. 8)

**F6 13 Power to take fingerprints and samples: transitional provision**

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**Textual Amendments**

**F6** Ss. 10-13 omitted (15.12.2011) by virtue of [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), s. 31(2), [Sch. 7 para. 5\(3\)](#) (with Sch. 8)



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VALID FROM 13/08/2020

*Retention and use of fingerprints and samples*

PROSPECTIVE

**14 Material subject to the Police and Criminal Evidence Act 1984**

- (1) The Police and Criminal Evidence Act 1984 (c. 60) is amended as follows.
- (2) In section 63A(1) (fingerprints, impressions of footwear and samples: what they may be checked against), for paragraphs (a) and (b) substitute—
- “(a) other fingerprints, impressions of footwear or samples—
    - (i) to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or are held in connection with or as a result of an investigation of an offence, or
    - (ii) which are held by or on behalf of the Security Service or the Secret Intelligence Service;
  - (b) information derived from other samples—
    - (i) which is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a)(i) above, or
    - (ii) which is held by or on behalf of the Security Service or the Secret Intelligence Service.”.
- (3) In section 63A(1ZA) (fingerprints from a person whose identity is unclear: what they may be checked against), for the words from “other fingerprints” to the end, substitute “other fingerprints—
- (a) to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence, or
  - (b) which are held by or on behalf of the Security Service or the Secret Intelligence Service.”.

F7(4) .....

F7(5) .....

F7(6) .....

**Textual Amendments**

F7 S. 14(4)-(6) repealed (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, [Sch. 10 Pt. 1](#) (with s. 97); S.I. 2013/2104, art. 3(d)

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## PROSPECTIVE

## 15 Material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989

- (1) The Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) is amended as follows.
- (2) In Article 63A(1) (fingerprints and samples: what they may be checked against), for paragraphs (a) and (b), substitute—
  - “(a) other fingerprints, impressions of footwear or samples—
    - (i) to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or are held in connection with or as a result of an investigation of an offence, or
    - (ii) which are held by or on behalf of the Security Service or the Secret Intelligence Service;
  - (b) information derived from other samples—
    - (i) which is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a)(i) above, or
    - (ii) which is held by or on behalf of the Security Service or the Secret Intelligence Service.”.
- (3) In Article 63A(1ZA) (fingerprints from a person whose identity is unclear: what they may be checked against), for “other fingerprints” to the end, substitute “other fingerprints—
  - (a) to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence, or
  - (b) which are held by or on behalf of the Security Service or the Secret Intelligence Service.”.
- (4) In Article 64(1A) (purposes for which fingerprints or samples may be retained and used), for the words from “except for purposes” to the end substitute “ except as described in paragraph (1AB) ”.
- (5) After paragraph (1AA) of that Article (inserted by section 12) insert—
 

“(1AB) The fingerprints, impressions of footwear or samples may be used—

  - (a) in the interests of national security,
  - (b) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
  - (c) for purposes related to the identification of a deceased person or of the person from whom the material came.”.
- (6) In paragraph (1B) of that Article, after “(1AA)” (inserted by section 12) insert “ or (1AB) ”.

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PROSPECTIVE

**F<sup>8</sup>16** **Material subject to the Terrorism Act 2000: England and Wales and Northern Ireland**

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**Textual Amendments**

**F8** Ss. 16, 17 repealed (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, **Sch. 10 Pt. 1** (with s. 97); [S.I. 2013/2104](#), art. 3(d)

PROSPECTIVE

**F<sup>8</sup>17** **Material subject to the Terrorism Act 2000: Scotland**

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**Textual Amendments**

**F8** Ss. 16, 17 repealed (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, **Sch. 10 Pt. 1** (with s. 97); [S.I. 2013/2104](#), art. 3(d)

**F<sup>9</sup>18** **Destruction of national security material not subject to existing statutory restrictions**

- (1) This section applies to fingerprints, DNA samples and DNA profiles that—
  - (a) are held for the purposes of national security by a law enforcement authority under the law of England and Wales or Northern Ireland, and
  - (b) are not held subject to existing statutory restrictions.
- (2) Material to which this section applies (“section 18 material”) must be destroyed if it appears to the responsible officer that the condition in subsection (3) is not met.
- (3) The condition is that the material has been—
  - (a) obtained by the law enforcement authority pursuant to an authorisation under Part 3 of the Police Act 1997 (authorisation of action in respect of property),
  - (b) obtained by the law enforcement authority in the course of surveillance, or use of a covert human intelligence source, authorised under Part 2 of the Regulation of Investigatory Powers Act 2000,
  - (c) supplied to the law enforcement authority by another law enforcement authority, or
  - (d) otherwise lawfully obtained or acquired by the law enforcement authority for any of the purposes mentioned in section 18D(1).

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- (4) In any other case, section 18 material must be destroyed unless it is retained by the law enforcement authority under any power conferred by section 18A or 18B, but this is subject to subsection (5).
- (5) A DNA sample to which this section applies must be destroyed—
  - (a) as soon as a DNA profile has been derived from the sample, or
  - (b) if sooner, before the end of the period of 6 months beginning with the date on which it was taken.
- (6) Section 18 material which ceases to be retained under a power mentioned in subsection (4) may continue to be retained under any other such power which applies to it.
- (7) Nothing in this section prevents section 18 material from being checked against other fingerprints, DNA samples or DNA profiles held by a law enforcement authority within such time as may reasonably be required for the check, if the responsible officer considers the check to be desirable.
- (8) For the purposes of subsection (1), the following are “existing statutory restrictions”—
  - (a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971;
  - (b) sections 22, 63A and 63D to 63U of the Police and Criminal Evidence Act 1984 and any corresponding provision in an order under section 113 of that Act;
  - (c) Articles 24, 63A and 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));
  - (d) section 2(2) of the Security Service Act 1989;
  - (e) section 2(2) of the Intelligence Services Act 1994;
  - (f) paragraphs 20(3) and 20A to 20J of Schedule 8 to the Terrorism Act 2000;
  - (g) section 56 of the Criminal Justice and Police Act 2001;
  - (h) paragraph 8 of Schedule 4 to the International Criminal Court Act 2001;
  - (i) sections 73, 83, 87, 88 and 89 of the Armed Forces Act 2006 and any provision relating to the retention of material in an order made under section 74, 93 or 323 of that Act;
  - (j) paragraphs 5 to 14 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011.

#### Textual Amendments

- F9** Ss. 18-18E substituted for s. 18 (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 4](#) (with s. 97); S.I. 2013/1814, art. 2(k)

#### 18A Retention of material: general

- (1) Section 18 material which is not a DNA sample and relates to a person who has no previous convictions or only one exempt conviction may be retained by the law enforcement authority until the end of the retention period specified in subsection (2), but this is subject to subsection (5).
- (2) The retention period is—

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- (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and
  - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (3) Section 18 material which is not a DNA sample and relates to a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or is so convicted before the material is required to be destroyed by virtue of this section, may be retained indefinitely.
- (4) Section 18 material which is not a DNA sample may be retained indefinitely if—
  - (a) it is held by the law enforcement authority in a form which does not include information which identifies the person to whom the material relates, and
  - (b) the law enforcement authority does not know, and has never known, the identity of the person to whom the material relates.
- (5) In a case where section 18 material is being retained by a law enforcement authority under subsection (4), if—
  - (a) the law enforcement authority comes to know the identity of the person to whom the material relates, and
  - (b) the material relates to a person who has no previous convictions or only one exempt conviction,the material may be retained by the law enforcement authority until the end of the retention period specified in subsection (6).
- (6) The retention period is the period of 3 years beginning with the date on which the identity of the person to whom the material relates comes to be known by the law enforcement authority.

#### Textual Amendments

**F9** Ss. 18-18E substituted for s. 18 (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 4](#) (with s. 97); S.I. 2013/1814, art. 2(k)

### **18B Retention for purposes of national security**

- (1) Section 18 material which is not a DNA sample may be retained for as long as a national security determination made by the responsible officer has effect in relation to it.
- (2) A national security determination is made if the responsible officer determines that it is necessary for any such section 18 material to be retained for the purposes of national security.
- (3) A national security determination—
  - (a) must be made in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which the determination is made, and
  - (c) may be renewed.

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#### Textual Amendments

- F9** Ss. 18-18E substituted for s. 18 (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 4](#) (with s. 97); S.I. 2013/1814, art. 2(k)

### 18C Destruction of copies

- (1) If fingerprints are required by section 18 to be destroyed, any copies of the fingerprints held by the law enforcement authority concerned must also be destroyed.
- (2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the law enforcement authority concerned except in a form which does not include information which identifies the person to whom the DNA profile relates.

#### Textual Amendments

- F9** Ss. 18-18E substituted for s. 18 (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 4](#) (with s. 97); S.I. 2013/1814, art. 2(k)

### 18D Use of retained material

- (1) Section 18 material must not be used other than—
  - (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation,
  - (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
  - (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Subject to subsection (1), section 18 material may be checked against other fingerprints, DNA samples or DNA profiles held by a law enforcement authority or <sup>F10</sup>the Scottish Police Authority ] if the responsible officer considers the check to be desirable.
- (3) Material which is required by section 18 to be destroyed must not at any time after it is required to be destroyed be used—
  - (a) in evidence against the person to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (4) In this section—
  - (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
  - (b) the reference to crime includes a reference to any conduct which—
    - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom), or
    - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, and

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- (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.

#### Textual Amendments

- F9** Ss. 18-18E substituted for s. 18 (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, [Sch. 1 para. 4](#) (with s. 97); S.I. 2013/1814, art. 2(k)
- F10** Words in s. 18D(2) substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 126\(1\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 23(m)

PROSPECTIVE

### 18E Sections 18 to 18E: supplementary provisions

- (1) In sections 18 to 18D and this section—

“DNA profile” means any information derived from a DNA sample;

“DNA sample” means any material that has come from a human body and consists of or includes human cells;

“fingerprints” means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of a person's fingers or either of a person's palms;

“law enforcement authority” means—

- (a) a police force,
- (b) the [<sup>F11</sup>National Crime Agency],
- (c) the Commissioners for Her Majesty's Revenue and Customs, or
- (d) a person formed or existing under the law of a country or territory outside the United Kingdom so far as exercising functions which—
  - (i) correspond to those of a police force, or
  - (ii) otherwise involve the investigation or prosecution of offences;

“police force” means any of the following—

- (a) the metropolitan police force;
- (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (c) the City of London police force;
- (d) [<sup>F12</sup>the Police Service of Scotland;]
- (e) the Police Service of Northern Ireland;
- (f) the Police Service of Northern Ireland Reserve;
- (g) the Ministry of Defence Police;
- (h) the Royal Navy Police;
- (i) the Royal Military Police;
- (j) the Royal Air Force Police;
- (k) the British Transport Police;

“recordable offence” has—

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- (a) in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and
- (b) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

“the responsible officer” means—

- (a) in relation to material obtained or acquired by a police force in England and Wales, the chief officer of the police force;
- (b) in relation to material obtained or acquired by the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland;
- (c) in relation to material obtained or acquired by the Ministry of Defence Police, the Chief Constable of the Ministry of Defence Police;
- (d) in relation to material obtained or acquired by the Royal Navy Police, the Royal Military Police or the Royal Air Force Police, the Provost Marshal for the police force which obtained or acquired the material;
- (e) in relation to material obtained or acquired by the British Transport Police, the Chief Constable of the British Transport Police;
- (f) in relation to material obtained or acquired by the [<sup>F13</sup>National Crime Agency], the Director General of the [<sup>F13</sup>National Crime Agency];
- (g) in relation to material obtained or acquired by the Commissioners for Her Majesty's Revenue and Customs, any of those Commissioners;
- (h) in relation to any other material, such person as the Secretary of State may by order specify;

“section 18 material” has the meaning given by section 18(2);

“terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.

- (2) An order under subsection (1) is subject to negative resolution procedure.
- (3) For the purposes of section 18A, a person is to be treated as having been convicted of an offence if the person—
  - (a) has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
  - (b) has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
  - (c) has been found not guilty of the offence by reason of insanity, or
  - (d) has been found to be under a disability and to have done the act charged in respect of the offence.
- (4) Sections 18A and this section, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (5) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 of the Protection of Freedoms Act 2012.
- (6) For the purposes of section 18A—
  - (a) a person has no previous convictions if the person has not previously been convicted in England and Wales or Northern Ireland of a recordable offence, and



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- (b) if the person has been previously so convicted of a recordable offence, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was aged under 18.
- (7) In subsection (6), “qualifying offence” has—
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and
  - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (8) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under section 18A whether the person has been convicted of only one offence.]

#### Textual Amendments

- F9** Ss. 18-18E substituted for s. 18 (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 4](#) (with s. 97); S.I. 2013/1814, art. 2(k)
- F11** Words in s. 18E(1) substituted (7.10.2013) by Crime and Courts Act 2013, s. 61(2), Sch. 8 para. 186; S.I. 2013/1682, art. 3(v)
- F12** Words in s. 18E(1) substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 126\(2\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 23(m)
- F13** Words in s. 18E(1)(f) substituted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(3\), Sch. 4 para. 41](#)

### *Disclosure of information and the intelligence services*

#### **19 Disclosure and the intelligence services**

- (1) A person may disclose information to any of the intelligence services for the purposes of the exercise by that service of any of its functions.
- (2) Information obtained by any of the intelligence services in connection with the exercise of any of its functions may be used by that service in connection with the exercise of any of its other functions.
- (3) Information obtained by the Security Service for the purposes of any of its functions may be disclosed by it—
  - (a) for the purpose of the proper discharge of its functions,
  - (b) for the purpose of the prevention or detection of serious crime, or
  - (c) for the purpose of any criminal proceedings.
- (4) Information obtained by the Secret Intelligence Service for the purposes of any of its functions may be disclosed by it—
  - (a) for the purpose of the proper discharge of its functions,
  - (b) in the interests of national security,

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- (c) for the purpose of the prevention or detection of serious crime, or
  - (d) for the purpose of any criminal proceedings.
- (5) Information obtained by GCHQ for the purposes of any of its functions may be disclosed by it—
- (a) for the purpose of the proper discharge of its functions, or
  - (b) for the purpose of any criminal proceedings.
- (6) A disclosure under this section does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (7) The provisions of this section are subject to section 20 (savings and other supplementary provisions).

## **20 Disclosure and the intelligence services: supplementary provisions**

- (1) The provisions of section 19 (disclosure and use of information) do not affect the duties with respect to the obtaining or disclosure of information imposed—
- (a) on the Director-General of the Security Service, by section 2(2) of the Security Service Act 1989;
  - (b) on the Chief of the Intelligence Service, by section 2(2) of the Intelligence Services Act 1994;
  - (c) on the Director of GCHQ, by section 4(2) of that Act.
- (2) Nothing in that section authorises a disclosure that—
- (a) contravenes the Data Protection Act 1998 (c. 29), or
  - (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (3) The provisions of that section are without prejudice to any rule of law authorising the obtaining, use or disclosure of information by any of the intelligence services.
- (4) Schedule 1 contains amendments consequential on that section.

## **21 Disclosure and the intelligence services: interpretation**

- (1) In sections 19 and 20 “the intelligence services” means the Security Service, the Secret Intelligence Service and GCHQ.
- (2) References in section 19 to the functions of those services are—
- (a) in the case of the Security Service, to the functions specified in section 1(2) to (4) of the Security Service Act 1989 (c. 5);
  - (b) in the case of the Secret Intelligence Service, to the functions specified in section 1(1)(a) and (b) of the Intelligence Services Act 1994 (c. 13), exercised in accordance with section 1(2) of that Act;
  - (c) in the case of GCHQ—
    - (i) to the functions specified in section 3(1)(a) of that Act, exercised in accordance with section 3(2) of that Act, and
    - (ii) to the functions specified in section 3(1)(b) of that Act.

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- (3) In sections 19, 20 and this section “GCHQ” has the same meaning as in the Intelligence Services Act 1994 (see section 3(3) of that Act).
- (4) Section 81(5) of the Regulation of Investigatory Powers Act 2000 (meaning of “prevention” and “detection”), so far as it relates to serious crime, applies for the purposes of section 19 as it applies for the purposes of the provisions of that Act not contained in Chapter 1 of Part 1.

VALID FROM 30/04/2012

## PART 2

### POST-CHARGE QUESTIONING OF TERRORIST SUSPECTS

VALID FROM 10/07/2012

#### 22 Post-charge questioning: England and Wales

- (1) The following provisions apply in England and Wales.
- (2) A judge of the Crown Court may authorise the questioning of a person about an offence—
  - (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
  - (b) after the person has been sent for trial for the offence,if the offence is a terrorism offence or it appears to the judge that the offence has a terrorist connection.
- (3) The judge—
  - (a) must specify the period during which questioning is authorised, and
  - (b) may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.
- (4) The period during which questioning is authorised—
  - (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
  - (b) must not exceed 48 hours.

This is without prejudice to any application for a further authorisation under this section.
- (5) Where the person is in prison or otherwise lawfully detained, the judge may authorise the person's removal to another place and detention there for the purpose of being questioned.
- (6) A judge must not authorise the questioning of a person under this section unless satisfied—
  - (a) that further questioning of the person is necessary in the interests of justice,

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- (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
  - (c) that what is authorised will not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge.
- (7) Codes of practice under section 66 of the Police and Criminal Evidence Act 1984 (c. 60) must make provision about the questioning of a person by a constable in accordance with this section.
- (8) Nothing in this section prevents codes of practice under that section making other provision for the questioning of a person by a constable about an offence—
- (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
  - (b) after the person has been sent for trial for the offence.
- (9) In section 34(1) of the Criminal Justice and Public Order Act 1994 (c. 33) (effect of accused's failure to mention facts when questioned or charged: circumstances in which the section applies) after paragraph (b) insert—
- “; or
- (c) at any time after being charged with the offence, on being questioned under section 22 of the Counter-Terrorism Act 2008 (post-charge questioning), failed to mention any such fact.”.
- (10) Nothing in section 36 or 37 of that Act (effect of accused's failure or refusal to account for certain matters) is to be read as excluding the operation of those sections in relation to a request made in the course of questioning under this section.

VALID FROM 10/07/2012

### 23 Post-charge questioning: Scotland

- (1) The following provisions apply in Scotland.
- (2) On the application of the prosecutor, a sheriff may authorise the questioning of a person about an offence—
- (a) after the person has been charged with the offence, or
  - (b) after the person has appeared on petition in respect of the offence,
- if the offence is a terrorism offence or it appears to the sheriff that the offence has a terrorist connection.
- (3) The sheriff—
- (a) must specify the period during which questioning is authorised, and
  - (b) may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.
- (4) The period during which questioning is authorised—
- (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
  - (b) must not exceed 48 hours.

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This is without prejudice to any application for a further authorisation under this section.

- (5) Where the person is in prison or otherwise lawfully detained, the sheriff may authorise the person's removal to another place and detention there for the purpose of being questioned.
- (6) A sheriff must not authorise the questioning of a person under this section unless satisfied—
  - (a) that further questioning of the person is necessary in the interests of justice,
  - (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
  - (c) that what is authorised will not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge.
- (7) Evidence of any statement obtained from a person as a result of questioning under this section is not inadmissible solely because the questioning occurred after the person had been charged (or had appeared on petition).
- (8) In this section “charged” means charged by the police.

PROSPECTIVE

#### 24 Post-charge questioning: Northern Ireland

- (1) The following provisions apply in Northern Ireland.
- (2) A district judge (magistrates' courts) may authorise the questioning of a person about an offence—
  - (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
  - (b) after the person has been committed for trial for the offence, if the offence is a terrorism offence.
- (3) The judge—
  - (a) must specify the period during which questioning is authorised, and
  - (b) may impose such conditions as appear to the judge to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.
- (4) The period during which questioning is authorised—
  - (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
  - (b) must not exceed 48 hours.

This is without prejudice to any application for a further authorisation under this section.

- (5) Where the person is in prison or otherwise lawfully detained, the judge may authorise the person's removal to another place and detention there for the purpose of being questioned.

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- (6) A district judge (magistrates' courts) must not authorise the questioning of a person under this section unless satisfied—
- (a) that further questioning of the person is necessary in the interests of justice,
  - (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
  - (c) that what is authorised will not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge.
- (7) Codes of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) must make provision about the questioning of a person by a constable in accordance with this section.
- (8) Nothing in this section prevents codes of practice under that Article making other provision for the questioning of a person by a constable about an offence—
- (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
  - (b) after the person has been committed for trial for the offence.
- (9) In Article 3(1) of the Criminal Evidence (Northern Ireland) Order 1988 (S.I. 1988/1987 (N.I. 20)) (effect of accused's failure to mention facts when questioned or charged: circumstances in which the article applies) after sub-paragraph (b) insert—
- “; or
- (c) at any time after being charged with the offence, on being questioned under section 24 of the Counter-Terrorism Act 2008 (post-charge questioning), failed to mention any such fact,”.
- (10) Nothing in Article 5 or 6 of that Order (effect of accused's failure or refusal to account for certain matters) is to be read as excluding the operation of those Articles in relation to a request made in the course of questioning under this section.

VALID FROM 10/07/2012

## 25 Recording of interviews

- (1) This section applies to any interview of a person by a constable under section 22, 23 or 24 (post-charge questioning).
- (2) Any such interview must be video recorded, and the video recording must be with sound.
- (3) The Secretary of State must issue a code of practice about the video recording of interviews to which this section applies.
- (4) The interview and video recording must be conducted in accordance with that code of practice.
- (5) A code of practice under this section—
  - (a) may make provision in relation to a particular part of the United Kingdom, and
  - (b) may make different provision for different parts of the United Kingdom.

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## **26 Issue and revision of code of practice**

- (1) This section applies to the code of practice under section 25 (recording of interviews).
- (2) The Secretary of State must—
  - (a) publish a draft of the proposed code, and
  - (b) consider any representations made about the draft, and may modify the draft in the light of the representations made.
- (3) The Secretary of State must lay a draft of the code before Parliament.
- (4) After laying the draft code before Parliament the Secretary of State may bring it into operation by order.
- (5) The order is subject to affirmative resolution procedure.
- (6) The Secretary of State may revise a code and issue the revised code, and subsections (2) to (5) apply to a revised code as they apply to an original code.
- (7) Failure to observe a provision of a code does not of itself render a constable liable to criminal or civil proceedings.
- (8) A code—
  - (a) is admissible in evidence in criminal and civil proceedings, and
  - (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

VALID FROM 26/07/2012

## **27 Meaning of “terrorism offence”**

- (1) For the purposes of sections 22 to 24 (post-charge questioning) the following are terrorism offences—
  - (a) an offence under any of the following provisions of the Terrorism Act 2000 (c. 11)—
    - sections 11 to 13 (offences relating to proscribed organisations),
    - sections 15 to 19, 21A and 21D (offences relating to terrorist property),
    - sections 38B and 39 (disclosure of and failure to disclose information about terrorism),
    - section 54 (weapons training),
    - sections 56 to 58A (directing terrorism, possessing things and collecting information for the purposes of terrorism),
    - sections 59 to 61 (inciting terrorism outside the United Kingdom),
    - paragraph 14 of Schedule 5 (order for explanation of material: false or misleading statements),
    - paragraph 1 of Schedule 6 (failure to provide customer information in connection with a terrorist investigation),
    - paragraph 18 of Schedule 7 (offences in connection with port and border controls);

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- (b) an offence in respect of which there is jurisdiction by virtue of any of sections 62 to 63D of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc);
  - (c) an offence under section 113 of the Anti-Terrorism, Crime and Security Act 2001 (c. 24) (use of noxious substances or things);
  - (d) an offence under any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
    - sections 1 and 2 (encouragement of terrorism),
    - sections 5, 6 and 8 (preparation and training for terrorism),
    - sections 9, 10 and 11 (offences relating to radioactive devices and material and nuclear facilities);
  - (e) an offence in respect of which there is jurisdiction by virtue of section 17 of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc);
  - (f) an offence under paragraph 8 or 9 of Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 (c. 6) (offences in connection with searches for munitions and transmitters in Northern Ireland).
- (2) Any ancillary offence in relation to an offence listed in subsection (1) is a terrorism offence for the purposes of sections 22 to 24.
- (3) The Secretary of State may by order amend subsection (1).
- (4) Any such order is subject to affirmative resolution procedure.

VALID FROM 16/02/2009

### PART 3

#### PROSECUTION AND PUNISHMENT OF TERRORIST OFFENCES

VALID FROM 18/06/2009

#### *Jurisdiction*

#### **28 Jurisdiction to try offences committed in the UK**

- (1) Where an offence to which this section applies is committed in the United Kingdom—
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.
- (2) The section applies to—



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- (a) an offence under any of the following provisions of the Terrorism Act 2000 (c. 11)—
- sections 11 to 13 (offences relating to proscribed organisations),
  - sections 15 to 19, 21A and 21D (offences relating to terrorist property),
  - sections 38B and 39 (disclosure of and failure to disclose information about terrorism),
  - section 47 (offences relating to stop and search powers),
  - section 51 (parking a vehicle in contravention of an authorisation or restriction),
  - section 54 (weapons training),
  - sections 56 to 58A (directing terrorism and possessing things or collecting information for the purposes of terrorism),
  - section 116 (failure to stop a vehicle when required to do so),
  - paragraph 1 of Schedule 6 (failure to provide customer information in connection with a terrorist investigation),
  - paragraph 18 of Schedule 7 (offences in connection with port and border controls);
- (b) an offence under section 113 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (use of noxious substances or things to cause harm and intimidate);
- (c) an offence under any of the following provisions of the Terrorism Act 2006 (c. 11)—
- sections 1 and 2 (encouragement of terrorism),
  - sections 5, 6 and 8 (preparation and training for terrorism),
  - sections 9, 10 and 11 (offences relating to radioactive devices etc).
- (3) The Secretary of State may by order amend subsection (2).
- (4) Any such order is subject to affirmative resolution procedure.
- (5) The power conferred by subsection (3) may be exercised so as to add offences to subsection (2) only if it appears to the Secretary of State necessary to do so for the purpose of dealing with terrorism.
- (6) In section 1 of the Justice and Security (Northern Ireland) Act 2007 (c. 6) (issue of certificate for trial without a jury), after subsection (6) insert—
- “(6A) The Director of Public Prosecutions for Northern Ireland may not issue a certificate under subsection (2) if—
- (a) the proceedings are taken in Northern Ireland only by virtue of section 28 of the Counter-Terrorism Act 2008, and
  - (b) it appears to the Director that the only condition that is met is condition 4.”.

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### *Consent to prosecution*

#### **29 Consent to prosecution of offence committed outside UK**

In section 117(2A) of the Terrorism Act 2000 (c. 11) and in section 19(2) of the Terrorism Act 2006 (cases in which permission of Attorney General or Advocate General for Northern Ireland required before DPP gives consent to prosecution), after “committed” insert “ outside the United Kingdom or ”.

VALID FROM 18/06/2009

### *Sentencing*

#### **30 Sentences for offences with a terrorist connection: England and Wales**

- (1) This section applies where a court in England and Wales is considering for the purposes of sentence the seriousness of an offence specified in Schedule 2 (offences where terrorist connection to be considered).
- (2) If having regard to the material before it for the purposes of sentencing it appears to the court that the offence has or may have a terrorist connection, the court must determine whether that is the case.
- (3) For that purpose the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence.
- (4) If the court determines that the offence has a terrorist connection, the court—
  - (a) must treat that fact as an aggravating factor, and
  - (b) must state in open court that the offence was so aggravated.
- (5) In this section “sentence”, in relation to an offence, includes any order made by a court when dealing with a person in respect of the offence.
- (6) This section has effect in relation only to offences committed on or after the day it comes into force.

#### **31 Sentences for offences with a terrorist connection: Scotland**

- (1) This section applies where in Scotland, in relation to an offence specified in Schedule 2 (offences where terrorist connection to be considered)—
  - (a) it is libelled in an indictment, and
  - (b) proved,
 that the offence has been aggravated by reason of having a terrorist connection.
- (2) Where this section applies, the court must take the aggravation into account in determining the appropriate sentence.
- (3) Where the sentence imposed by the court in respect of the offence is different from that which the court would have imposed if the offence had not been aggravated by reason of having a terrorist connection, the court must state the extent of, and the reasons for, the difference.

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- (4) For the purposes of this section, evidence from a single source is sufficient to prove that an offence has been aggravated by reason of having a terrorist connection.
- (5) This section has effect in relation only to offences committed on or after the day it comes into force.

### **32 Sentences for offences with a terrorist connection: armed forces**

- (1) This section applies where a service court is considering for the purposes of sentence the seriousness of a service offence as respects which the corresponding civil offence is an offence specified in Schedule 2.
- (2) If having regard to the material before it for the purposes of sentencing it appears to the court that the offence has or may have a terrorist connection, the court must determine whether that is the case.
- (3) For that purpose the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence.
- (4) If the court determines that the offence has a terrorist connection, the court—
  - (a) must treat that fact as an aggravating factor, and
  - (b) must state in open court that the offence was so aggravated.
- (5) This section has effect in relation only to offences committed on or after the day it comes into force.

### **33 Power to amend list of offences where terrorist connection to be considered**

- (1) The Secretary of State may by order amend Schedule 2 (offences where terrorist connection to be considered).
- (2) Any such order is subject to affirmative resolution procedure.
- (3) An order adding an offence to that Schedule applies only in relation to offences committed after the order comes into force.

VALID FROM 18/06/2009

### *Forfeiture*

### **34 Forfeiture: terrorist property offences**

For section 23 of the Terrorism Act 2000 (c. 11) (forfeiture) substitute—

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## *“Forfeiture*

### **23 Forfeiture: terrorist property offences**

- (1) The court by or before which a person is convicted of an offence under any of sections 15 to 18 may make a forfeiture order in accordance with the provisions of this section.
- (2) Where a person is convicted of an offence under section 15(1) or (2) or 16, the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
  - (a) had been used for the purposes of terrorism, or
  - (b) they intended should be used, or had reasonable cause to suspect might be used, for those purposes.
- (3) Where a person is convicted of an offence under section 15(3) the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
  - (a) had been used for the purposes of terrorism, or
  - (b) which, at that time, they knew or had reasonable cause to suspect would or might be used for those purposes.
- (4) Where a person is convicted of an offence under section 17 or 18 the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
  - (a) had been used for the purposes of terrorism, or
  - (b) was, at that time, intended by them to be used for those purposes.
- (5) Where a person is convicted of an offence under section 17 the court may order the forfeiture of the money or other property to which the arrangement in question related, and which—
  - (a) had been used for the purposes of terrorism, or
  - (b) at the time of the offence, the person knew or had reasonable cause to suspect would or might be used for those purposes.
- (6) Where a person is convicted of an offence under section 18 the court may order the forfeiture of the money or other property to which the arrangement in question related.
- (7) Where a person is convicted of an offence under any of sections 15 to 18, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.”.

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**35 Forfeiture: other terrorism offences and offences with a terrorist connection**

- (1) After section 23 of the Terrorism Act 2000 (c. 11) (forfeiture: terrorist property offences) insert—

**“23A Forfeiture: other terrorism offences and offences with a terrorist connection**

- (1) The court by or before which a person is convicted of an offence to which this section applies may order the forfeiture of any money or other property in relation to which the following conditions are met—
- (a) that it was, at the time of the offence, in the possession or control of the person convicted; and
  - (b) that—
    - (i) it had been used for the purposes of terrorism,
    - (ii) it was intended by that person that it should be used for the purposes of terrorism, or
    - (iii) the court believes that it will be used for the purposes of terrorism unless forfeited.
- (2) This section applies to an offence under—
- (a) any of the following provisions of this Act—
    - section 54 (weapons training);
    - section 57, 58 or 58A (possessing things and collecting information for the purposes of terrorism);
    - section 59, 60 or 61 (inciting terrorism outside the United Kingdom);
  - (b) any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
    - section 2 (dissemination of terrorist publications);
    - section 5 (preparation of terrorist acts);
    - section 6 (training for terrorism);
    - sections 9 to 11 (offences involving radioactive devices or materials).
- (3) This section applies to any ancillary offence (as defined in section 94 of the Counter-Terrorism Act 2008) in relation to an offence listed in subsection (2).
- (4) This section also applies to an offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered) as to which—
- (a) in England and Wales, the court dealing with the offence has determined, in accordance with section 30 of that Act, that the offence has a terrorist connection;
  - (b) in Scotland, it has been proved, in accordance with section 31 of that Act, that the offence has a terrorist connection.
- (5) The Secretary of State may by order amend subsection (2).

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(6) An order adding an offence to subsection (2) applies only in relation to offences committed after the order comes into force.”.

(2) In section 123 of that Act (orders and regulations)—

(a) in subsection (4) (instruments subject to affirmative resolution procedure), after paragraph (a) insert—

“(aa) section 23A(5);”;

(b) in subsection (5), for “paragraph (b)” substitute “ paragraph (aa) or (b) ”.

### **36 Forfeiture: supplementary provisions**

After section 23A of the Terrorism Act 2000 (c. 11) (inserted by section 35 above), insert—

#### **“23B Forfeiture: supplementary provisions**

- (1) Before making an order under section 23 or 23A, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under that section.
- (2) In considering whether to make an order under section 23 or 23A in respect of any property, a court shall have regard to—
  - (a) the value of the property, and
  - (b) the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making).
- (3) A court in Scotland must not make an order under section 23 or 23A except on the application of the prosecutor—
  - (a) in proceedings on indictment, when the prosecutor moves for sentence, and
  - (b) in summary proceedings, before the court sentences the accused; and for the purposes of any appeal or review, an order under either of those sections made by a court in Scotland is a sentence.
- (4) Schedule 4 makes further provision in relation to forfeiture orders under section 23 or 23A.”.

### **37 Forfeiture: application of proceeds to compensate victims**

(1) In Part 1 of Schedule 4 to the Terrorism Act 2000 (c. 11) (forfeiture orders: England and Wales), after paragraph 4 insert—

#### **“Application of proceeds to compensate victims**

- 4A (1) Where a court makes a forfeiture order in a case where—
- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
  - (b) any such offence is taken into consideration by the court in determining sentence,

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the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.

(2) For this purpose the proceeds of the forfeiture means the aggregate amount of—

- (a) any forfeited money, and
- (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation,

reduced by the amount of any payment under paragraph 2(1)(d) or 3(1).

(3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 under which the offender would have been required to pay compensation of an amount not less than the specified amount.”.

(2) In Part 2 of that Schedule (forfeiture orders: Scotland), after paragraph 17 insert—

**“Application of proceeds to compensate victims**

17A (1) Where a court makes a forfeiture order in a case where—

- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
- (b) any such offence is taken into consideration by the court in determining sentence,

the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.

(2) For this purpose the proceeds of the forfeiture means the aggregate amount of—

- (a) any forfeited money, and
- (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation,

reduced by the amount of any payment under paragraph 16(1)(c) or 17(2).

(3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995 under which the offender would have been required to pay compensation of an amount not less than the specified amount.”.

(3) In Part 3 of that Schedule (forfeiture orders: Northern Ireland), after paragraph 32 insert—

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### “Application of proceeds to compensate victims

- 32A (1) Where a court makes a forfeiture order in a case where—
- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
  - (b) any such offence is taken into consideration by the court in determining sentence,
- the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.
- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—
- (a) any forfeited money, and
  - (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation,
- reduced by the amount of any payment under paragraph 30(1)(d) or 31(1).
- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 under which the offender would have been required to pay compensation of an amount not less than the specified amount.”.

### 38 Forfeiture: other amendments

- (1) For section 120A of the Terrorism Act 2000 (c. 11) (supplemental powers of the court in respect of forfeiture orders) substitute—

#### “120A Supplementary powers of forfeiture

- (1) A court by or before which a person is convicted of an offence under a provision mentioned in column 1 of the following table may order the forfeiture of any item mentioned in column 2 in relation to that offence.

<i>Offence</i>	<i>Items liable to forfeiture</i>
Section 54 (weapons training)	Anything that the court considers to have been in the possession of the person for purposes connected with the offence.
Section 57 (possession for terrorist purposes)	Any article that is the subject matter of the offence.
Section 58 (collection of information)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.



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Section 58A (eliciting, publishing or communicating information about members of armed forces etc)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.
<p>(2) Before making an order under this section, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under this section.</p> <p>(3) An order under this section does not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).</p> <p>(4) Where a court makes an order under this section, it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture, including, in particular, provision relating to the retention, handling, disposal or destruction of what is forfeited.</p> <p>(5) Provision made by virtue of subsection (4) may be varied at any time by the court that made it.</p> <p>(6) The power of forfeiture under this section is in addition to any power of forfeiture under section 23A.”.</p>	
<p>(2) In section 7 of the Terrorism Act 2006 (c. 11), after subsection (6) insert—</p> <p>“(7) The power of forfeiture under this section is in addition to any power of forfeiture under section 23A of the Terrorism Act 2000.”.</p>	
<p>(3) After section 11 of the Terrorism Act 2006 (terrorist threats relating to devices, materials or facilities) insert—</p>	
<p><b>“11A Forfeiture of devices, materials or facilities</b></p>	
<p>(1) A court by or before which a person is convicted of an offence under section 9 or 10 may order the forfeiture of any radioactive device or radioactive material, or any nuclear facility, made or used in committing the offence.</p> <p>(2) A court by or before which a person is convicted of an offence under section 11 may order the forfeiture of any radioactive device or radioactive material, or any nuclear facility, which is the subject of—</p> <p>(a) a demand under subsection (1) of that section, or</p> <p>(b) a threat falling within subsection (3) of that section.</p> <p>(3) Before making an order under this section, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under this section.</p> <p>(4) An order under this section does not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).</p> <p>(5) Where a court makes an order under this section, it may also make such other provision as appears to it to be necessary for giving effect to</p>	

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the forfeiture, including, in particular, provision relating to the retention, handling, disposal or destruction of what is forfeited.

- (6) Provision made by virtue of subsection (5) may be varied at any time by the court that made it.
- (7) The power of forfeiture under this section is in addition to any power of forfeiture under section 23A of the Terrorism Act 2000.”.

### **39 Forfeiture: consequential amendments**

Schedule 3 contains amendments consequential on those made by sections 34 to 38.

VALID FROM 01/10/2009

## **PART 4**

### NOTIFICATION REQUIREMENTS

#### *Introductory*

### **40 Scheme of this Part**

- (1) This Part imposes notification requirements on persons dealt with in respect of certain offences—
  - (a) sections 41 to 43 specify the offences to which this Part applies;
  - (b) sections 44 to 46 make provision as to the sentences or orders triggering the notification requirements;
  - (c) sections 47 to 52 contain the notification requirements; and
  - (d) section 53 makes provision as to the period for which the requirements apply.
- (2) This Part also provides for—
  - (a) orders applying the notification requirements to persons dealt with outside the United Kingdom for corresponding foreign offences (see section 57 and Schedule 4); and
  - (b) orders imposing restrictions on travel outside the United Kingdom on persons subject to the notification requirements (see section 58 and Schedule 5).
- (3) Schedule 6 provides for the application of this Part to service offences and related matters.

#### *Offences to which this Part applies*

### **41 Offences to which this Part applies: terrorism offences**

- (1) This Part applies to—

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- (a) an offence under any of the following provisions of the Terrorism Act 2000 (c. 11)—
    - section 11 or 12 (offences relating to proscribed organisations),
    - sections 15 to 18 (offences relating to terrorist property),
    - section 38B (failure to disclose information about acts of terrorism),
    - section 54 (weapons training),
    - sections 56 to 61 (directing terrorism, possessing things and collecting information for the purposes of terrorism and inciting terrorism outside the United Kingdom);
  - (b) an offence in respect of which there is jurisdiction by virtue of any of sections 62 to 63D of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc);
  - (c) an offence under section 113 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (use of noxious substances or things);
  - (d) an offence under any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
    - sections 1 and 2 (encouragement of terrorism),
    - sections 5, 6 and 8 (preparation and training for terrorism),
    - sections 9, 10 and 11 (offences relating to radioactive devices and material and nuclear facilities);
  - (e) an offence in respect of which there is jurisdiction by virtue of section 17 of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc).
- (2) This Part also applies to any ancillary offence in relation to an offence listed in subsection (1).
- (3) The Secretary of State may by order amend subsection (1).
- (4) Any such order is subject to affirmative resolution procedure.
- (5) An order adding an offence applies only in relation to offences dealt with after the order comes into force.
- (6) An order removing an offence has effect in relation to offences whenever dealt with, whether before or after the order comes into force.
- (7) Where an offence is removed from the list, a person subject to the notification requirements by reason of that offence being listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the order comes into force.

#### **42 Offences to which this Part applies: offences having a terrorist connection**

- (1) This Part applies to—
- (a) an offence as to which a court has determined under section 30 (sentences for offences with a terrorist connection: England and Wales) that the offence has a terrorist connection, and
  - (b) an offence in relation to which section 31 applies (sentences for offences with terrorist connection: Scotland).

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- (2) A person to whom the notification requirements apply by virtue of such a determination as is mentioned in subsection (1)(a) may appeal against it to the same court, and subject to the same conditions, as an appeal against sentence.
- (3) If the determination is set aside on appeal, the notification requirements are treated as never having applied to that person in respect of the offence.
- (4) Where an order is made under section 33 removing an offence from the list in Schedule 2, a person subject to the notification requirements by reason of that offence being so listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the order comes into force.

### **43 Offences dealt with before commencement**

- (1) This Part applies to a person dealt with for an offence before the commencement of this Part only if—
  - (a) the offence is on the commencement of this Part within section 41(1) or (2) (offences to which this Part applies: terrorism offences), and
  - (b) immediately before the commencement of this Part the person—
    - (i) is imprisoned or detained in pursuance of the sentence passed or order made in respect of the offence,
    - (ii) would be so imprisoned or detained but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal, or
    - (iii) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence.
- (2) In relation to a person dealt with for an offence before the commencement of this Part—
  - (a) any reference in this Part to a sentence or order under a specified statutory provision includes a sentence or order under any corresponding earlier statutory provision;
  - (b) any reference in this Part to a person being or having been found to be under a disability and to have done the act charged against them in respect of an offence includes a reference to their being or having been found—
    - (i) unfit to be tried for the offence,
    - (ii) insane so that their trial for the offence cannot or could not proceed, or
    - (iii) unfit to be tried and to have done the act charged against them in respect of the offence.

*Persons to whom the notification requirements apply*

### **44 Persons to whom the notification requirements apply**

The notification requirements apply to a person who—

- (a) is aged 16 or over at the time of being dealt with for an offence to which this Part applies, and
- (b) is made subject in respect of the offence to a sentence or order within section 45 (sentences or orders triggering notification requirements).

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## **45 Sentences or orders triggering notification requirements**

- (1) The notification requirements apply to a person who in England and Wales—
- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
    - (i) imprisonment or custody for life,
    - (ii) imprisonment or detention in a young offender institution for a term of 12 months or more,
    - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
    - (iv) detention for life or for a period of 12 months or more under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (offenders under 18 convicted of certain serious offences),
    - (v) a detention and training order for a term of 12 months or more under section 100 of that Act (offenders under age of 18),
    - (vi) detention for public protection under section 226 of the Criminal Justice Act 2003 (serious offences committed by persons under 18), or
    - (vii) detention during Her Majesty's pleasure; or
  - (b) has been—
    - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
    - (ii) found not guilty by reason of insanity of such an offence, or
    - (iii) found to be under a disability and to have done the act charged against them in respect of such an offence, and made subject in respect of the offence to a hospital order.
- (2) The notification requirements apply to a person who in Scotland—
- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
    - (i) imprisonment or detention in a young offenders institution for life,
    - (ii) imprisonment or detention in a young offenders institution for a term of 12 months or more,
    - (iii) an order for lifelong restriction under section 210F of the Criminal Procedure (Scotland) Act 1995 (c. 46),
    - (iv) detention without limit of time under section 205(2) of that Act (punishment for murder for offenders under 18), or
    - (v) detention for a period of 12 months or more under section 208 of that Act (detention of children convicted on indictment); or
  - (b) has been—
    - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
    - (ii) acquitted of such an offence on grounds of insanity at the time of the act or omission constituting the offence, or
    - (iii) found, following an examination of facts under section 55 of the Criminal Procedure (Scotland) Act 1995 (insanity in bar of trial: examination of facts) in relation to such an offence, to have done the act or omission constituting the offence,

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and made subject in respect of the offence to a hospital order.

- (3) The notification requirements apply to a person who in Northern Ireland—
- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
    - (i) imprisonment for life,
    - (ii) imprisonment or detention in a young offenders centre for a term of 12 months or more,
    - (iii) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)),
    - (iv) an extended custodial sentence under Article 14(5) of that Order (offenders under 21 convicted of certain offences),
    - (v) a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) for a period of 12 months or more,
    - (vi) detention during the pleasure of the Secretary of State under Article 45(1) of that Order (punishment of certain grave crimes committed by a child), or
    - (vii) detention under Article 45(2) of that Order for a period of 12 months or more (other serious offences committed by a child); or
  - (b) has been—
    - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
    - (ii) found not guilty by reason of insanity of such an offence, or
    - (iii) found to be unfit to be tried and to have done the act charged against them in respect of such an offence,
 and made subject in respect of the offence to a hospital order.
- (4) The references in this section to an offence carrying a maximum term of imprisonment of 12 months or more—
- (a) are to an offence carrying such a maximum term in the case of a person who has attained the age of 21 (18 in relation to England and Wales), and
  - (b) include an offence carrying in the case of such a person a maximum term of life imprisonment and an offence for which in the case of such a person the sentence is fixed by law as life imprisonment.
- (5) In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (c. 43) subsection (4)(a) above has effect with the omission of the words “(18 in relation to England and Wales)”.

#### **46 Power to amend specified terms or periods of imprisonment or detention**

- (1) The Secretary of State may by order amend the provisions of section 45 referring to a specified term or period of imprisonment or detention.
- (2) An order reducing a specified term or period has effect only in relation to persons dealt with after the order comes into force.
- (3) Where an order increases a specified term or period—
  - (a) it has effect in relation to persons dealt with at any time, whether before or after the order comes into force, and

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(b) a person who would not have been subject to the notification requirements if the order had been in force when the offence was dealt with (and who is not otherwise subject to those requirements) ceases to be subject to the requirements when the order comes into force.

(4) An order under this section is subject to affirmative resolution procedure.

### *Notification requirements*

#### **47 Initial notification**

(1) A person to whom the notification requirements apply must notify the following information to the police within the period of three days beginning with the day on which the person is dealt with in respect of the offence in question.

(2) The information required is—

- (a) date of birth;
- (b) national insurance number;
- (c) name on the date on which the person was dealt with in respect of the offence (where the person used one or more other names on that date, each of those names);
- (d) home address on that date;
- (e) name on the date on which notification is made (where the person uses one or more other names on that date, each of those names);
- (f) home address on the date on which notification is made;
- (g) address of any other premises in the United Kingdom at which, at the time the notification is made, the person regularly resides or stays;
- (h) any prescribed information.

(3) In subsection (2) “prescribed” means prescribed by regulations made by the Secretary of State.

Such regulations are subject to affirmative resolution procedure.

(4) In determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—

- (a) remanded in or committed to custody by an order of a court,
- (b) serving a sentence of imprisonment or detention,
- (c) detained in a hospital, or
- (d) detained under the Immigration Acts.

(5) This section does not apply to a person who—

- (a) is subject to the notification requirements in respect of another offence (and does not cease to be so subject before the end of the period within which notification is to be made), and
- (b) has complied with this section in respect of that offence.

(6) In the application of this section to a person dealt with for an offence before the commencement of this Part who, immediately before commencement—

- (a) would be imprisoned or detained in respect of the offence but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal, or

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(b) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence,  
the reference in subsection (1) to the day on which the person is dealt with in respect of the offence shall be read as a reference to the commencement of this Part.

#### **48 Notification of changes**

- (1) A person to whom the notification requirements apply who uses a name that has not previously been notified to the police must notify the police of that name.
- (2) If there is a change of the home address of a person to whom the notification requirements apply, the person must notify the police of the new home address.
- (3) A person to whom the notification requirements apply who resides or stays at premises in the United Kingdom the address of which has previously not been notified to the police—
  - (a) for a period of 7 days, or
  - (b) for two or more periods, in any period of 12 months, that taken together amount to 7 days,
 must notify the police of the address of those premises.
- (4) A person to whom the notification requirements apply who is released—
  - (a) from custody pursuant to an order of a court,
  - (b) from imprisonment or detention pursuant to a sentence of a court,
  - (c) from detention in a hospital, or
  - (d) from detention under the Immigration Acts,
 must notify the police of that fact.

This does not apply if the person is at the same time required to notify the police under section 47 (initial notification).

- (5) A person who is required to notify information within section 47(2)(h) (prescribed information) must notify the police of the prescribed details of any prescribed changes in that information.
- (6) In subsection (5) “prescribed” means prescribed by regulations made by the Secretary of State.  
Such regulations are subject to affirmative resolution procedure.
- (7) Notification under this section must be made before the end of the period of three days beginning with the day on which the event in question occurs.

Where subsection (3) applies that is the day with which the period referred to in paragraph (a) or (b) (as the case may be) ends.

- (8) In determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
  - (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.



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- (9) References in this section to previous notification are to previous notification by the person under section 47 (initial notification), this section, section 49 (periodic re-notification) or section 56 (notification on return after absence from UK).
- (10) Notification under this section must be accompanied by re-notification of the other information mentioned in section 47(2).

#### **49 Periodic re-notification**

- (1) A person to whom the notification requirements apply must, within the period of one year after last notifying the police in accordance with—
  - (a) section 47 (initial notification),
  - (b) section 48 (notification of change),
  - (c) this section, or
  - (d) section 56 (notification on return after absence from UK),re-notify to the police the information mentioned in section 47(2).
- (2) Subsection (1) does not apply if the period referred to in that subsection ends at a time when the person is—
  - (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.
- (3) In that case section 48(4) and (10) (duty to notify of release and to re-notify other information) apply when the person is released.

#### **50 Method of notification and related matters**

- (1) This section applies to notification under—
  - (a) section 47 (initial notification),
  - (b) section 48 (notification of change),
  - (c) section 49 (periodic re-notification), or
  - (d) section 56 (notification on return after absence from UK).
- (2) Notification must be made by the person—
  - (a) attending at a police station in the person's local police area, and
  - (b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.
- (3) A person making a notification under section 48 (notification of change) in relation to premises referred to in subsection (3) of that section may make the notification at a police station that would fall within subsection (2)(a) above if the address of those premises were the person's home address.
- (4) The notification must be acknowledged.
- (5) The acknowledgement must be in writing, and in such form as the Secretary of State may direct.
- (6) The person making the notification must, if requested to do so by the police officer or person to whom the notification is made, allow the officer or person to—

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- (a) take the person's fingerprints,
  - (b) photograph any part of the person, or
  - (c) do both these things,
- for the purpose of verifying the person's identity.

- (7) In the application of this section to Scotland, references to a police officer are to be read as references to a constable.

## **51 Meaning of “local police area”**

- (1) For the purposes of section 50(2) (method of notification) a person's “local police area” means—
- (a) the police area in which the person's home address is situated;
  - (b) in the absence of a home address, the police area in which the home address last notified is situated;
  - (c) in the absence of a home address and of any such notification, the police area in which the court of trial was situated.
- (2) In subsection (1)(c) “the court of trial” means—
- (a) the court by or before which the conviction or finding was made by virtue of which the notification requirements apply to the person, or
  - (b) if that conviction or finding was one substituted on an appeal or reference, the court by or before which the proceedings were taken from which the appeal or reference was brought.
- (3) This section and section 50(2) apply in relation to Northern Ireland as if Northern Ireland were a police area.

## **52 Travel outside the United Kingdom**

- (1) The Secretary of State may by regulations make provision requiring a person to whom the notification requirements apply who leaves the United Kingdom—
- (a) to notify the police of their departure before they leave, and
  - (b) to notify the police of their return if they subsequently return to the United Kingdom.
- (2) Notification of departure must disclose—
- (a) the date on which the person intends to leave the United Kingdom;
  - (b) the country (or, if there is more than one, the first country) to which the person will travel;
  - (c) the person's point of arrival (determined in accordance with the regulations) in that country;
  - (d) any other information required by the regulations.
- (3) Notification of return must disclose such information as is required by the regulations about the person's return to the United Kingdom.
- (4) Notification under this section must be given in accordance with the regulations.
- (5) Regulations under this section are subject to affirmative resolution procedure.

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*Period for which notification requirements apply*

**53 Period for which notification requirements apply**

- (1) The period for which the notification requirements apply is—
  - (a) 30 years in the case of a person who—
    - (i) is aged 18 or over at the time of conviction for the offence, and
    - (ii) receives in respect of the offence a sentence within subsection (2);
  - (b) 15 years in the case of a person who—
    - (i) is aged 18 or over at the time of conviction for the offence, and
    - (ii) receives in respect of the offence a sentence within subsection (3);
  - (c) 10 years in any other case.
- (2) The sentences in respect of which a 30 year period applies are—
  - (a) in England and Wales—
    - (i) imprisonment or custody for life,
    - (ii) imprisonment or detention in a young offender institution for a term of 10 years or more,
    - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
    - (iv) detention during Her Majesty's pleasure;
  - (b) in Scotland—
    - (i) imprisonment or detention in a young offenders institution for life,
    - (ii) imprisonment or detention in a young offenders institution for a term of 10 years or more,
    - (iii) an order for lifelong restriction under section 210F of the Criminal Procedure (Scotland) Act 1995 (c. 46);
  - (c) in Northern Ireland—
    - (i) imprisonment for life,
    - (ii) imprisonment for a term of 10 years or more,
    - (iii) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)),
    - (iv) an extended custodial sentence for a term of 10 years or more under Article 14(5) of that Order (offenders under 21 convicted of certain offences),
    - (v) detention during the pleasure of the Secretary of State under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)).
- (3) The sentences in respect of which a 15 year period applies are—
  - (a) in England and Wales, imprisonment or detention in a young offender institution for a term of 5 years or more but less than 10 years;
  - (b) in Scotland, imprisonment or detention in a young offenders institution for a term of 5 years or more but less than 10 years;
  - (c) in Northern Ireland—
    - (i) imprisonment for a term of 5 years or more but less than 10 years,
    - (ii) an extended custodial sentence for a term of 5 years or more but less than 10 years under Article 14(5) of the Criminal Justice (Northern

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Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)) (offenders under 21 convicted of certain offences).

- (4) The period begins with the day on which the person is dealt with for the offence.
- (5) If a person who is the subject of a finding within section 45(1)(b)(iii), (2)(b)(iii) or (3)(b)(iii) (finding of disability, etc) is subsequently tried for the offence, the period resulting from that finding ends—
- (a) if the person is acquitted, at the conclusion of the trial;
  - (b) if the person is convicted, when the person is again dealt with in respect of the offence.
- (6) For the purposes of determining the length of the period—
- (a) a person who has been sentenced in respect of two or more offences to which this Part applies to consecutive terms of imprisonment is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the terms; and
  - (b) a person who has been sentenced in respect of two or more such offences to concurrent terms of imprisonment (X and Y) that overlap for a period (Z) is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to X plus Y minus Z.
- (7) In determining whether the period has expired, there shall be disregarded any period when the person was—
- (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.

#### *Offences in relation to notification*

### **54 Offences relating to notification**

- (1) A person commits an offence who—
- (a) fails without reasonable excuse to comply with—  
section 47 (initial notification),  
section 48 (notification of changes),  
section 49 (periodic re-notification),  
section 50(6) (taking of fingerprints or photographs),  
any regulations made under section 52(1) (travel outside United Kingdom), or  
section 56 (notification on return after absence from UK); or
  - (b) notifies to the police in purported compliance with—  
section 47 (initial notification),  
section 48 (notification of changes),  
section 49 (periodic re-notification),  
any regulations made under section 52(1) (travel outside United Kingdom), or  
section 56 (notification on return after absence from UK),  
any information that the person knows to be false.

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- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.
- (3) In the application of subsection (2)(a)—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), or
  - (b) in Northern Ireland,
- for “12 months” substitute “ 6 months ”.
- (4) A person—
- (a) commits an offence under subsection (1)(a) above on the day on which the person first fails without reasonable excuse to comply with—
    - section 47 (initial notification),
    - section 48 (notification of changes),
    - section 49 (periodic re-notification),
    - any regulations made under section 52(1) (travel outside United Kingdom), or
    - section 56 (notification on return after absence from UK), and
  - (b) continues to commit it throughout any period during which the failure continues.
- But a person must not be prosecuted under subsection (1) more than once in respect of the same failure.
- (5) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

## **55 Effect of absence abroad**

- (1) If a person to whom the notification requirements apply is absent from the United Kingdom for any period the following provisions apply.
- (2) During the period of absence the period for which the notification requirements apply continues to run.
- (3) The period of absence does not affect the obligation under section 47 (initial notification).
- This is subject to subsection (4).
- (4) Section 47 does not apply if—
- (a) the period of absence begins before the end of the period within which notification must be made under that section, and
  - (b) the person's absence results from the person's removal from the United Kingdom.
- (5) Section 48 (notification of changes)—
- (a) applies in relation to an event that occurs before the period of absence, but

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(b) does not apply in relation to an event that occurs during the period of absence.

Paragraph (a) is subject to subsection (6).

- (6) Section 48 does not apply in relation to an event that occurs before the period of absence if—
- (a) the period of absence begins before the end of the period within which notification must be made under that section, and
  - (b) the person's absence results from the person's removal from the United Kingdom.
- (7) Section 49 (periodic re-notification) does not apply if the period referred to in subsection (1) of that section ends during the period of absence.
- (8) Section 53(7) (disregard of period of custody etc) applies in relation to the period of absence as if it referred to any period when the person was—
- (a) remanded in or committed to custody by an order of a court outside the United Kingdom,
  - (b) serving a sentence of imprisonment or detention imposed by such a court,
  - (c) detained in a hospital pursuant to an order of such a court that is equivalent to a hospital order, or
  - (d) subject to a form of detention outside the United Kingdom that is equivalent to detention under the Immigration Acts.
- (9) References in this section and section 56 to a person's removal from the United Kingdom include—
- (a) the person's removal from the United Kingdom in accordance with the Immigration Acts,
  - (b) the person's extradition from the United Kingdom, or
  - (c) the person's transfer from the United Kingdom to another country pursuant to a warrant under section 1 of the Repatriation of Prisoners Act 1984 (c. 47).

## **56 Notification on return after absence from UK**

- (1) This section applies if, before the end of the period for which the notification requirements apply, a person to whom the requirements apply returns to the United Kingdom after a period of absence and—
- (a) the person was not required to make a notification under section 47 (initial notification),
  - (b) there has been a change to any of the information last notified to the police in accordance with—
    - (i) section 47,
    - (ii) section 48 (notification of changes),
    - (iii) section 49 (periodic re-notification), or
    - (iv) this section, or
  - (c) the period referred to in section 49(1) (period after which re-notification required) ended during the period of absence.
- (2) The person must notify or (as the case may be) re-notify to the police the information mentioned in section 47(2) within the period of three days beginning with the day of return.

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- (3) In determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
- (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.
- (4) This section does not apply if—
- (a) the person subsequently leaves the United Kingdom,
  - (b) the period of absence begins before the end of the period within which notification must be made under this section, and
  - (c) the person's absence results from the person's removal from the United Kingdom.
- (5) The obligation under this section does not affect any obligation to notify information under section 52(3) (regulations requiring notification of return etc).

*Supplementary provisions*

**57 Notification orders**

Schedule 4 makes provision for notification orders applying the notification requirements of this Part to persons who have been dealt with outside the United Kingdom in respect of a corresponding foreign offence.

**58 Foreign travel restriction orders**

Schedule 5 makes provision for foreign travel restriction orders prohibiting persons to whom the notification requirements apply from—

- (a) travelling to a country outside the United Kingdom named or described in the order,
- (b) travelling to any country outside the United Kingdom other than a country named or described in the order, or
- (c) travelling to any country outside the United Kingdom.

**59 Application of Part to service offences and related matters**

Schedule 6 makes provision for the application of this Part to service offences and related matters.

**60 Minor definitions for Part 4**

In this Part—

“country” includes a territory;

“detained in a hospital” means detained in a hospital under—

- (a) Part 3 of the Mental Health Act 1983 (c. 20),
- (b) Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), or

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(c) Part 3 of the Mental Health (Northern Ireland) Order (S.I. 1986/595 (N.I. 4));

“home address” means, in relation to a person—

(a) the address of the person's sole or main residence in the United Kingdom, or

(b) where the person has no such residence, the address or location of a place in the United Kingdom where the person can regularly be found and, if there is more than one such place, such one of those places as the person may select;

“hospital order” means—

(a) a hospital order within the meaning of the Mental Health Act 1983,

(b) an order under Part 6 of the Criminal Procedure (Scotland) Act 1995, or

(c) a hospital order within the meaning of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

“passport” means—

(a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77), or

(b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom or by or on behalf of an international organisation,

and includes any document that can be used (in some or all circumstances) instead of a passport;

“photograph” includes any process by means of which an image may be produced;

“release” from imprisonment or detention includes release on licence but not temporary release.

## **61 References to a person being “dealt with” for an offence**

(1) References in this Part to a person being dealt with for or in respect of an offence are to their being sentenced, or made subject to a hospital order, in respect of the offence.

References in this Part to an offence being dealt with are to a person being dealt with in respect of the offence.

(2) Subject to the following provisions of this section, references in this Part to the time at which a person is dealt with for an offence are to the time at which they are first dealt with—

(a) in England and Wales, by a magistrates' court or the Crown Court;

(b) in Scotland, by a sheriff or by the High Court of Justiciary;

(c) in Northern Ireland, by the county court.

This is referred to below as “the original decision”.

(3) Where the original decision is varied (on appeal or otherwise), then—

(a) if the result is that the conditions for application of the notification requirements to a person in respect of an offence cease to be met (and paragraph (c) below does not apply), the notification requirements are treated as never having applied to that person in respect of that offence;



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- (b) if the result is that the conditions for application of the notification requirements to a person in respect of an offence are met where they were not previously met (and paragraph (c) below does not apply)—
    - (i) the person is treated as dealt with for the offence when the variation takes place, and
    - (ii) the notification requirements apply accordingly;
  - (c) if—
    - (i) a conviction of, or finding in relation to, a different offence is substituted, and
    - (ii) the conditions for application of the notification requirements were met in respect of the original offence and are also met in respect of the substituted offence,  
the person is treated as if they had been dealt with for the substituted offence at the time of the original decision;
  - (d) if the sentence is varied so as to become one by virtue of which the notification requirements would apply for a different period, the period for which those requirements apply shall be determined as if the sentence as varied had been imposed at the time of the original decision;
  - (e) in any other case, the variation is disregarded.
- (4) For the purposes of—
- (a) section 41(5) (effect of order adding offence to list of terrorism offences),
  - (b) section 44(a) or paragraph 4(a) of Schedule 6 (persons subject to notification requirements: age when dealt with for offence),
  - (c) section 46(2) or paragraph 6(2) of Schedule 6 (effect of order reducing term or period triggering notification requirements),
  - (d) section 53(5)(b) or paragraph 7(5)(b) of Schedule 6 (period for which notification requirements apply: ending of period resulting from finding of disability etc where person subsequently tried), and
  - (e) paragraph 2(3) of Schedule 5 (conditions for making foreign travel restriction order: behaviour since offence dealt with),
- a person is treated as dealt with at the time of the original decision and any subsequent variation of the decision is disregarded.
- (5) For the purposes of—
- (a) section 43(1) and (2) or paragraph 3(1) and (2) of Schedule 6 (application of Part to offences dealt with before commencement), and
  - (b) paragraph 2(4) of Schedule 5 (conditions for making foreign travel restriction order where offence dealt with before commencement),
- a person is dealt with for an offence before the commencement of this Part if the time of the original decision falls before the commencement of this Part.
- Where in such a case subsection (3) above applies for the purposes of any provision of this Part, that subsection has effect as if the provisions of this Part had been in force at all material times.
- (6) In section 47(6) (adaptation of initial notification requirements in case of offence dealt with before commencement)—
- (a) the reference in the opening words to an offence dealt with before the commencement of this Part is to an offence where the time of the original decision falls before the commencement of this Part, and

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- (b) the reference in the closing words to when the offence is dealt with has the same meaning as in subsection (1) of that section.
- (7) References in this section to the variation of a decision include any proceedings by which the decision is altered, set aside or quashed, or in which a further decision is come to following the setting aside or quashing of the decision.

VALID FROM 27/11/2008

## PART 5

### TERRORIST FINANCING AND MONEY LAUNDERING

#### **62 Terrorist financing and money laundering**

Schedule 7 makes provision conferring powers on the Treasury to act against terrorist financing, money laundering and certain other activities.

VALID FROM 27/11/2008

## PART 6

### FINANCIAL RESTRICTIONS PROCEEDINGS

#### CHAPTER 1

##### APPLICATION TO SET ASIDE FINANCIAL RESTRICTIONS DECISION

#### **63 Application to set aside financial restrictions decision**

- (1) This section applies to any decision of the Treasury in connection with the exercise of any of their functions under—
- (a) the UN terrorism orders,
  - (b) Part 2 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (freezing orders), or
  - (c) Schedule 7 to this Act (terrorist financing, money laundering and certain other activities: financial restrictions).
- (2) Any person affected by the decision may apply to the High Court or, in Scotland, the Court of Session to set aside the decision.
- (3) In determining whether the decision should be set aside the court shall apply the principles applicable on an application for judicial review.
- (4) If the court decides that a decision should be set aside it may make any such order, or give any such relief, as may be made or given in proceedings for judicial review.

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- (5) Without prejudice to the generality of subsection (4), if the court sets aside a decision of the Treasury—
  - (a) to give a direction under any of the UN terrorism orders,
  - (b) to make a freezing order under Part 2 of the Anti-terrorism, Crime and Security Act 2001 (c. 24), or
  - (c) to give a direction or make an order under Schedule 7 to this Act,the court must quash the relevant direction or order.
- (6) This section applies whether the decision of the Treasury was made before or after the commencement of this section.
- (7) After the commencement of this section an application to set aside a decision of the Treasury to which this section applies must be made under this section.
- (8) This section does not apply to any decision of the Treasury to make an order under paragraph 8 or 28(6) of Schedule 7 to this Act.

#### **64 UN terrorism orders**

- (1) For the purposes of section 63 the UN terrorism orders are—
  - (a) the Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365);
  - (b) the Al-Qa'ida and Taliban (United Nations Measures) Order 2002 (S.I. 2002/111);
  - (c) the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657);
  - (d) the Al-Qa'ida and Taliban (United Nations Measures) Order 2006 (S.I. 2006/2952).
- (2) The Treasury may by order amend subsection (1) by—
  - (a) adding other Orders in Council made under section 1 of the United Nations Act 1946 (c. 45),
  - (b) providing that a reference to a specified Order in Council is to that order as amended by a further Order in Council (made after the passing of this Act), or
  - (c) removing an Order in Council.
- (3) An order under subsection (2) is subject to negative resolution procedure.

## **CHAPTER 2**

### **FINANCIAL RESTRICTIONS PROCEEDINGS**

#### *Introductory*

#### **65 Financial restrictions proceedings**

In this Chapter “financial restrictions proceedings” means proceedings in the High Court or the Court of Session on an application under section 63 or on a claim arising from any matter to which such an application relates.

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### *Rules of court, disclosure and related matters*

#### **66 General provisions about rules of court**

- (1) The following provisions apply to rules of court relating to—
  - (a) financial restrictions proceedings, or
  - (b) proceedings on an appeal relating to financial restrictions proceedings.
- (2) A person making rules of court must have regard to—
  - (a) the need to secure that the decisions that are the subject of the proceedings are properly reviewed; and
  - (b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.
- (3) Rules of court may make provision—
  - (a) about the mode of proof and about evidence in the proceedings;
  - (b) enabling or requiring the proceedings to be determined without a hearing; and
  - (c) about legal representation in the proceedings.
- (4) Rules of court may make provision—
  - (a) enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party to the proceedings (or to any legal representative of that party);
  - (b) enabling the court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of that party);
  - (c) about the functions of a person appointed as a special advocate;
  - (d) enabling the court to give a party to the proceedings a summary of evidence taken in the party's absence.
- (5) In this section—
  - (a) references to a party to the proceedings do not include the Treasury;
  - (b) references to a party's legal representative do not include a person appointed as a special advocate.
- (6) Nothing in this section shall be read as restricting the power to make rules of court or the matters to be taken into account when doing so.

#### **67 Rules of court about disclosure**

- (1) The following provisions apply to rules of court relating to—
  - (a) financial restrictions proceedings, or
  - (b) proceedings on an appeal relating to financial restrictions proceedings.
- (2) Rules of court must secure that the Treasury are required to disclose—
  - (a) material on which they rely,
  - (b) material which adversely affects their case, and
  - (c) material which supports the case of a party to the proceedings.

This is subject to the following provisions of this section.

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(3) Rules of court must secure—

- (a) that the Treasury have the opportunity to make an application to the court for permission not to disclose material otherwise than to—
  - (i) the court, and
  - (ii) any person appointed as a special advocate;
- (b) that such an application is always considered in the absence of every party to the proceedings (and every party's legal representative);
- (c) that the court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be contrary to the public interest;
- (d) that, if permission is given by the court not to disclose material, it must consider requiring the Treasury to provide a summary of the material to every party to the proceedings (and every party's legal representative);
- (e) that the court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest.

(4) Rules of court must secure that in cases where the Treasury—

- (a) do not receive the court's permission to withhold material, but elect not to disclose it, or
- (b) are required to provide a party to the proceedings with a summary of material that is withheld, but elect not to provide the summary,

provision to the following effect applies.

(5) The court must be authorised—

- (a) if it considers that the material or anything that is required to be summarised might adversely affect the Treasury's case or support the case of a party to the proceedings, to direct that the Treasury shall not rely on such points in their case, or shall make such concessions or take such other steps, as the court may specify, or
- (b) in any other case, to ensure that the Treasury do not rely on the material or (as the case may be) on that which is required to be summarised.

(6) Nothing in this section, or in rules of court made under it, is to be read as requiring the court to act in a manner inconsistent with Article 6 of the Human Rights Convention.

(7) In this section—

- (a) references to a party to the proceedings do not include the Treasury;
- (b) references to a party's legal representative do not include a person appointed as a special advocate; and
- (c) “the Human Rights Convention” means the Convention within the meaning of the Human Rights Act 1998 (c. 42) (see section 21(1) of that Act).

## 68 Appointment of special advocate

(1) The relevant law officer may appoint a person to represent the interests of a party to—

- (a) financial restrictions proceedings, or
- (b) proceedings on an appeal, or further appeal, relating to financial restrictions proceedings,

in any of those proceedings from which the party (and any legal representative of the party) is excluded.

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This is referred to in this Chapter as appointment as “a special advocate”.

- (2) A person appointed as a special advocate is not responsible to the party to the proceedings whose interests the person is appointed to represent.
- (3) The relevant law officer is—
  - (a) in relation to financial restrictions proceedings in England and Wales, or on an appeal or further appeal relating to such proceedings, the Attorney General;
  - (b) in relation to financial restrictions proceedings in Scotland, or on an appeal or further appeal relating to such proceedings, the Advocate General for Scotland;
  - (c) in relation to financial restrictions proceedings in Northern Ireland, or on an appeal or further appeal relating to such proceedings, the Advocate General for Northern Ireland.
- (4) A person may be appointed as a special advocate only if—
  - (a) in the case of an appointment by the Attorney General, the person has a general legal qualification for the purposes of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (b) in the case of an appointment by the Advocate General for Scotland, the person is an advocate or a solicitor who has rights of audience in the Court of Session or the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46);
  - (c) in the case of an appointment by the Advocate General for Northern Ireland, the person is a member of the Bar of Northern Ireland.
- (5) Until the coming into force of section 27 of the Justice (Northern Ireland) Act 2002 (c. 26), references in this section to the Advocate General for Northern Ireland are to be read as references to the Attorney General for Northern Ireland.

The coming into force of that section does not affect any appointment of a person as a special advocate made by the Attorney General for Northern Ireland before that time.

## **69 Intercept evidence**

- (1) Section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of intercepted communications etc from legal proceedings) is amended as follows.
- (2) In subsection (1) (excepted proceedings), after paragraph (da) insert—
  - “(db) any financial restrictions proceedings as defined in section 65 of the Counter-Terrorism Act 2008, or any proceedings arising out of such proceedings;”.
- (3) In subsection (2) (persons to whom disclosure not to be made), after paragraph (za) insert—
  - “(zb) in the case of proceedings falling within paragraph (db), to—
    - (i) a person, other than the Treasury, who is or was a party to the proceedings, or
    - (ii) any person who for the purposes of the proceedings (but otherwise than by virtue of appointment as a

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special advocate) represents a person falling within sub-paragraph (i);”.

#### **70 Qualification of duty to give reasons**

In paragraph 11 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (Treasury's duty to give reason why person is specified in freezing order), make the existing provision sub-paragraph (1) and after it insert—

“(2) Sub-paragraph (1) does not apply if, or to the extent that, particulars of the reason would not be required to be disclosed to the applicant in proceedings to set aside the freezing order.”.

#### *Supplementary provisions*

#### **71 Allocation of proceedings to Queen's Bench Division**

In paragraph 2 of Schedule 1 to the Supreme Court Act 1981 (c. 54) (business allocated to the Queen's Bench Division), after sub-paragraph (ba) insert—

“(bb) all financial restrictions proceedings within the meaning of Chapter 2 of Part 6 of the Counter-Terrorism Act 2008 (see section 65 of that Act);”.

#### **72 Initial exercise of powers by Lord Chancellor**

(1) The first time after the passing of this Act that rules of court are made in exercise of the powers conferred by this Chapter—

- (a) in relation to proceedings in England and Wales, or
- (b) in relation to proceedings in Northern Ireland,

they may be made by the Lord Chancellor instead of by the person who would otherwise make them.

(2) Before making rules of court under this section, the Lord Chancellor must consult—

- (a) in relation to rules applicable to proceedings in England and Wales, the Lord Chief Justice of England and Wales;
- (b) in relation to rules applicable to proceedings in Northern Ireland, the Lord Chief Justice of Northern Ireland.

The Lord Chancellor is not required to undertake any other consultation before making the rules.

(3) The requirements of subsection (2)(a) and (b) may be satisfied by consultation that took place wholly or partly before the passing of this Act.

(4) Rules of court made by the Lord Chancellor under this section—

- (a) must be laid before Parliament, and
- (b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which they were made, cease to have effect at the end of that period.

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In reckoning the period of 40 days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

- (5) If rules cease to have effect in accordance with subsection (4)—
- (a) that does not affect anything previously done in reliance on the rules; and
  - (b) subsection (1) applies as if the rules had not been made.
- (6) The following provisions do not apply to rules of court made by the Lord Chancellor under this section—
- (a) section 3(6) of the Civil Procedure Act 1997 (c. 12) (Parliamentary procedure for civil procedure rules);
  - (b) section 56 of the Judicature (Northern Ireland) Act 1978 (c. 23) (statutory rules procedure).

Until section 85 of the Courts Act 2003 (c. 39) (process for making civil procedure rules) comes into force, in paragraph (a) above for “section 3(6)” substitute “section 3(2)”.

### **73 Interpretation**

In this Chapter—

- “financial restrictions proceedings” has the meaning given by section 65;
- “rules of court” means rules for regulating the practice and procedure to be followed in the High Court or the Court of Appeal or in the Court of Session;
- “special advocate” means a person appointed under section 68.

VALID FROM 26/01/2009

## **PART 7**

### MISCELLANEOUS

VALID FROM 16/02/2009

#### *Inquiries*

### **74 Inquiries: intercept evidence**

- (1) In section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of intercepted communications etc from legal proceedings), in subsection (7), for paragraph (c) substitute—
- “(c) a disclosure to the panel of an inquiry held under the Inquiries Act 2005 or to a person appointed as counsel to such an inquiry where, in the course of the inquiry, the panel has ordered the disclosure to



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be made to the panel alone or (as the case may be) to the panel and the person appointed as counsel to the inquiry; or”.

- (2) This section has effect in relation to inquiries under the Inquiries Act 2005 (c. 12) that have begun, but have not come to an end, before the day on which it comes into force as well as to such inquiries beginning or on after that day.
- (3) Section 14 of the Inquiries Act 2005 (end of inquiry) has effect for determining when an inquiry under that Act comes to an end for those purposes.

VALID FROM 16/02/2009

*Amendment of definition of “terrorism” etc*

**75 Amendment of definition of “terrorism” etc**

- (1) In the provisions listed below (which define “terrorism”, or make similar provision, and require that the use or threat of action is made for the purpose of advancing a political, religious or ideological cause), after “religious” insert “, racial”.
- (2) The provisions are—
  - (a) section 1(1)(c) of the Terrorism Act 2000 (c. 11),
  - (b) section 113A(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24),
  - (c) paragraph 4(2)(c) of Schedule 21 to the Criminal Justice Act 2003 (c. 44),
  - (d) Article 2(3)(c) of the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657),
  - (e) Article 4(1)(c) of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (S.I. 2002/1822),
  - (f) Article 2(1)(a)(iii) of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366),
  - (g) Article 3(1) of the Terrorism (United Nations Measures) (Isle of Man) Order 2001 (S.I. 2001/3364),
  - (h) Article 3(1) of the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (S.I. 2001/3363).

VALID FROM 16/02/2009

*Terrorist offences*

**76 Offences relating to information about members of armed forces etc**

- (1) After section 58 of the Terrorism Act 2000 (collection of information) insert—

**“58A Eliciting, publishing or communicating information about members of armed forces etc**

- (1) A person commits an offence who—

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- (a) elicits or attempts to elicit information about an individual who is or has been—
    - (i) a member of Her Majesty's forces,
    - (ii) a member of any of the intelligence services, or
    - (iii) a constable,
 which is of a kind likely to be useful to a person committing or preparing an act of terrorism, or
  - (b) publishes or communicates any such information.
- (2) It is a defence for a person charged with an offence under this section to prove that they had a reasonable excuse for their action.
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both;
  - (b) on summary conviction—
    - (i) in England and Wales or Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
    - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.
- (4) In this section “the intelligence services” means the Security Service, the Secret Intelligence Service and GCHQ (within the meaning of section 3 of the Intelligence Services Act 1994 (c. 13)).
- (5) Schedule 8A to this Act contains supplementary provisions relating to the offence under this section.”.
- (2) In the application of section 58A in England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) the reference in subsection (3)(b)(i) to 12 months is to be read as a reference to 6 months.
- (3) In section 118 of the Terrorism Act 2000 (c. 11) (defences), in subsection (5)(a) after “58,” insert “ 58A,”.
- (4) After Schedule 8 to the Terrorism Act 2000 insert the Schedule set out in Schedule 8 to this Act.

## **77 Terrorist property: disclosure of information about possible offences**

- (1) Part 3 of the Terrorism Act 2000 (terrorist property) is amended as follows.
- (2) In section 19(1) (duty to disclose belief or suspicion that offence committed), in paragraph (b) for “comes to his attention in the course of a trade, profession, business or employment” substitute—
- “comes to his attention—
- (i) in the course of a trade, profession or business, or
  - (ii) in the course of his employment (whether or not in the course of a trade, profession or business).”.

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(3) After section 22 insert—

**“22A Meaning of “employment”**

In sections 19 to 21B—

- (a) “employment” means any employment (whether paid or unpaid) and includes—
  - (i) work under a contract for services or as an office-holder,
  - (ii) work experience provided pursuant to a training course or programme or in the course of training for employment, and
  - (iii) voluntary work;
- (b) “employer” has a corresponding meaning.”.

(4) So far as the amendment in subsection (3) above extends any provision of sections 19 to 21B of the Terrorism Act 2000 involving belief or suspicion to cases to which that provision did not previously apply, that provision applies where the belief or suspicion is held after subsection (3) above comes into force even if based on information that came to the person's attention before that subsection was in force.

In any such case sections 19(2), 21(3) and 21A(4) of that Act (duty to make disclosure as soon as is reasonably practicable) are to be read as requiring the person to act as soon as is reasonably practicable after subsection (3) above comes into force.

VALID FROM 16/02/2009

*Control orders*

**78 Control orders: powers of entry and search**

(1) After section 7 of the Prevention of Terrorism Act 2005 (c. 2) insert—

**“7A Powers of entry and search: absconding**

- (1) If a constable reasonably suspects that the controlled person has absconded, the constable may enter (if necessary by force) and search premises to which this section applies—
  - (a) for the purpose of determining whether the person has absconded;
  - (b) if it appears that the person has absconded, for material that may assist in the pursuit and arrest of the controlled person.
- (2) The premises to which this section applies are—
  - (a) the controlled person's place of residence;
  - (b) other premises to which the controlled person is required to grant access in accordance with an obligation imposed by or under the control order;
  - (c) any premises—

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- (i) to which the controlled person has previously been required to grant access in accordance with an obligation imposed by or under a control order, and
- (ii) with which there is reason to believe that the controlled person is or was recently connected.

#### **7B Powers of entry and search: failure to grant access to premises**

- (1) This section applies where a constable reasonably suspects that the controlled person is not granting access to premises, as required by an obligation imposed by or under the control order, at a time when the controlled person is required, by an obligation so imposed, to be at those premises.
- (2) The constable may enter (if necessary by force) and search the premises—
  - (a) for the purpose of determining whether any of the obligations imposed by or under the control order have been contravened;
  - (b) if it appears that an obligation has been contravened, for material that may assist in the investigation of the contravention.

#### **7C Powers of entry and search: monitoring compliance with order**

- (1) A constable may apply for the issue of a warrant under this section for the purposes of determining whether the controlled person is complying with the obligations imposed by or under a control order.
- (2) The application must be made—
  - (a) in England and Wales, to a justice of the peace;
  - (b) in Scotland, to the sheriff;
  - (c) in Northern Ireland, to a lay magistrate.
- (3) A warrant under this section shall authorise any constable to enter (if necessary by force) and search premises to which this section applies that are specified in the warrant.
- (4) The premises to which this section applies are—
  - (a) the controlled person's place of residence;
  - (b) other premises to which the controlled person is required to grant access in accordance with an obligation imposed by or under the control order;
  - (c) any premises—
    - (i) to which the controlled person has previously been required to grant access in accordance with an obligation imposed by or under a control order, and
    - (ii) with which there is reason to believe that the controlled person is or was recently connected.
- (5) An application under this section may only be granted if the justice of the peace, the sheriff or the lay magistrate is satisfied that the issue of the warrant is necessary for the purposes of determining whether the controlled person is complying with the obligations imposed by or under the control order.”

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- (2) In section 9 of that Act (offences)—
- (a) after subsection (3) insert—
- “(3A) A person who intentionally obstructs the exercise by a constable of a power conferred by section 7A or 7B or by a warrant under section 7C commits an offence.”;
- (b) in subsection (7) after “subsection (3)” insert “ or (3A) ”.
- (3) These amendments have effect as from the commencement of this section and apply regardless of when the control order was made.

#### **79 Control orders: meaning of involvement in terrorism-related activity**

- (1) In section 1(9) of the Prevention of Terrorism Act 2005 (c. 2) (meaning of involvement in terrorism-related activity), in paragraph (d), for “to be involved in terrorism-related activity” substitute “ by the individual concerned to be involved in conduct falling within paragraphs (a) to (c) ”.
- (2) This amendment shall be deemed always to have had effect.

#### **80 Time allowed for representations by controlled person**

- (1) Section 3 of the Prevention of Terrorism Act 2005 (supervision by court of making of non-derogating control orders) is amended as follows.
- (2) In subsection (7) (opportunity for individual to make representations about directions given by the court), omit “within 7 days of the court's giving permission or (as the case may be) making its determination on the reference”.
- (3) After that subsection insert—
- “(7A) The individual must be given the opportunity to make those representations—
- (a) in the case of directions under subsection (2)(c), within 7 days of notice of the terms of the control order being delivered to the individual in accordance with section 7(8);
- (b) in the case of directions given under subsection (6)(b) or (c), within 7 days of the court making its determination on the reference.”.
- (4) These amendments apply in relation to control orders made after this section comes into force.

#### **81 Application for anonymity for controlled person**

- (1) In the Schedule to the Prevention of Terrorism Act 2005 (c. 2) (control order proceedings etc), paragraph 5 (application for anonymity for controlled person) is amended as follows.
- (2) In sub-paragraph (1)(a) omit “, at any time after a control order has been made,”.
- (3) After sub-paragraph (3) insert—
- “(4) In relation to a time before the control order has been made references in this paragraph to “the controlled person” shall be read as references to the

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person in respect of whom the Secretary of State has made an application to the court for (as the case may be)—

- (a) permission to make a non-derogating control order under section 3(1)(a), or
- (b) the making of a derogating control order under section 4(1).”.

(4) These amendments shall be deemed always to have had effect.

VALID FROM 16/02/2009

*Pre-charge detention of terrorist suspects*

**82 Pre-charge detention: minor amendments**

(1) In paragraph 9 of Schedule 8 to the Terrorism Act 2000 (direction that detained person may consult solicitor only within sight and hearing of qualified officer), for sub-paragraph (3) (grounds on which direction may be given) substitute—

“(3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing—

- (a) that, unless the direction is given, the exercise of the right by the detained person will have any of the consequences specified in paragraph 8(4), or
- (b) that the detained person has benefited from his criminal conduct and that, unless the direction is given, the exercise of the right by the detained person will hinder the recovery of the value of the property constituting the benefit.”.

(2) In paragraph 29(4) of that Schedule (meaning of “judicial authority”), in paragraphs (a) and (c) omit “after consulting the Lord Chancellor”.

VALID FROM 16/02/2009

*Forfeiture of terrorist cash*

**83 Forfeiture of terrorist cash: determination of period for which cash may be detained**

(1) Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (forfeiture of terrorist cash) is amended as follows.

(2) In paragraph 3 (detention of seized cash), after sub-paragraph (1) (which specifies the period for which cash seized may initially be detained) insert—

“(1A) In determining the period of 48 hours specified in sub-paragraph (1) there shall be disregarded—

- (a) any Saturday or Sunday;
- (b) Christmas Day;
- (c) Good Friday;

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- (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the cash is seized;
  - (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in the sheriff court district in which the cash is seized.”.
- (3) In paragraphs 4(1) and 10(2) (which refer to the period specified in paragraph 3(1)), after “48 hours” insert “ (determined in accordance with paragraph 3(1A)) ”.
- (4) The amendments in this section apply in relation to cash seized after this section comes into force.

#### **84 Forfeiture of terrorist cash: appeal against decision in forfeiture proceedings**

- (1) In Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (forfeiture of terrorist cash), for paragraph 7 (appeal against forfeiture) substitute—

##### **“Appeal against decision in forfeiture proceedings**

- 7 (1) A party to proceedings for an order under paragraph 6 (“a forfeiture order”) who is aggrieved by a forfeiture order made in the proceedings or by the decision of the court or sheriff not to make a forfeiture order may appeal—
- (a) in England and Wales, to the Crown Court;
  - (b) in Scotland, to the sheriff principal;
  - (c) in Northern Ireland, to a county court.
- (2) The appeal must be brought before the end of the period of 30 days beginning with the date on which the order is made or, as the case may be, the decision is given.
- This is subject to paragraph 7A (extended time for appealing in certain cases of deproscription).
- (3) The court or sheriff principal hearing the appeal may make any order that appears to the court or sheriff principal to be appropriate.
- (4) If an appeal against a forfeiture order is upheld, the court or sheriff principal may order the release of the cash.

##### **Extended time for appealing in certain cases where deproscription order made**

- 7A (1) This paragraph applies where—
- (a) a successful application for a forfeiture order relies (wholly or partly) on the fact that an organisation is proscribed,
  - (b) an application under section 4 of the Terrorism Act 2000 for a deproscription order in respect of the organisation is refused by the Secretary of State,
  - (c) the forfeited cash is seized under this Schedule on or after the date of the refusal of that application,

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- (d) an appeal against that refusal is allowed under section 5 of that Act,
  - (e) a deproscription order is made accordingly, and
  - (f) if the order is made in reliance on section 123(5) of that Act, a resolution is passed by each House of Parliament under section 123(5)(b).
- (2) Where this paragraph applies, an appeal under paragraph 7 above against the forfeiture order may be brought at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force.
- (3) In this paragraph a “deproscription order” means an order under section 3(3)(b) or (8) of the Terrorism Act 2000.”.
- (2) This amendment applies where the order or decision of the court or sheriff against which the appeal is brought is made or given after this section comes into force.

#### *Costs of policing at gas facilities*

#### **85 Costs of policing at gas facilities: England and Wales**

- (1) This section applies where the Secretary of State considers—
- (a) that the provision of extra police services at a gas facility in England or Wales is necessary because of a risk of loss of or disruption to the supply of gas connected with it, and
  - (b) that the loss or disruption would have a serious impact on the United Kingdom or any part of it.
- (2) In this section “extra police services” means—
- (a) the services of the Ministry of Defence Police provided under an agreement with the Secretary of State for Defence under section 2(2)(e) of the Ministry of Defence Police Act 1987 (c. 4), or
  - (b) special police services provided under section 25(1) of the Police Act 1996 (c. 16) at the Secretary of State's request.
- (3) The Secretary of State may require a designated gas transporter who has an interest in the gas facility to pay all or part of the costs incurred by the Secretary of State in respect of the provision of extra police services in or around the facility.
- (4) In this section “gas facility” means a facility used for the purposes of, or for purposes connected with, the transportation of gas from a gas shipper to a gas transporter or gas supplier.
- (5) The reference in subsection (3) to a designated gas transporter having an interest in a gas facility includes the facility being used for, or for purposes connected with, the supply of gas to the transporter.

#### **86 Costs of policing at gas facilities: Scotland**

- (1) This section applies where the Secretary of State considers—



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- (a) that the provision of extra police services at a gas facility in Scotland is necessary because of a risk of loss of or disruption to the supply of gas connected with it, and
  - (b) that the loss or disruption would have a serious impact on the United Kingdom or any part of it.
- (2) In this section “extra police services” means—
- (a) the services of the Ministry of Defence Police provided under an agreement with the Secretary of State for Defence under section 2(2)(e) of the Ministry of Defence Police Act 1987 (c. 4), or
  - (b) police services provided under an agreement under section 13 of the Police (Scotland) Act 1967 (c. 77) for the guarding, patrolling and watching of the gas facility entered into at the request of the Secretary of State by—
    - (i) the occupier of, or of part of, the facility, and
    - (ii) the police authority, chief constable of the police force or joint police board for the police area in which it is situated.
- (3) The Secretary of State may require a designated gas transporter who has an interest in the gas facility to pay all or part of the costs incurred by the Secretary of State in respect of the provision of extra police services within subsection (2)(a) in or around the facility.
- (4) The Secretary of State, if so requested by the occupier, must require a designated gas transporter who has an interest in the gas facility to pay the reasonable costs incurred by the occupier under any such agreement as is mentioned in subsection (2)(b).
- (5) In this section “gas facility” means a facility used for the purposes of, or for purposes connected with, the transportation of gas from a gas shipper to a gas transporter or gas supplier.
- (6) References in this section to a designated gas transporter having an interest in a gas facility include the facility being used for, or for purposes connected with, the supply of gas to the transporter.

## **87 Designated gas transporters**

- (1) The Secretary of State may by order designate a person who is the holder of a licence under section 7 of the Gas Act 1986 (c. 44) (licensing of gas transporters) as a designated gas transporter for the purposes of sections 85 to 90.
- (2) The order may provide for a person to be designated only in such capacity as may be specified in the order.
- (3) An order under this section is subject to negative resolution procedure.

## **88 Costs of policing at gas facilities: recovery of costs**

- (1) The Secretary of State may determine—
  - (a) the amount of the costs to be paid by a designated gas transporter under section 85 or 86,
  - (b) the manner in which and the times at which those costs are to be paid, and
  - (c) the person or persons to whom they are to be paid.

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- (2) An occupier who incurs costs under an agreement under section 13 of the Police (Scotland) Act 1967 (c. 77) that are required to be paid by a designated gas transporter under section 86 may recover them directly from the designated gas transporter.
- (3) A designated gas transporter may, in determining its charges for conveying gas through pipes, take into account—
  - (a) any payments made by the designated gas transporter under section 85 or 86, and
  - (b) the reasonable costs incurred by it as party to an agreement under section 13 of the Police (Scotland) Act 1967 entered into at the Secretary of State's request.

This applies despite anything in the conditions of the designated gas transporter's licence under section 7 of the Gas Act 1986 (c. 44) that prevents the transporter from recovering such payments or costs.

- (4) The Secretary of State may direct the Gas and Electricity Markets Authority (“the Authority”)—
  - (a) to treat the payments or costs as costs of a kind specified by the Secretary of State for the purposes of the determination by the designated gas transporter of the transporter's charges, or
  - (b) to allow the designated gas transporter to take into account payments made or costs incurred in or in relation to a period so specified in determining the transporter's charges for a period so specified.
- (5) The Secretary of State must consult the designated gas transporter and the Authority before giving a direction under this section.

## **89 Costs of policing at gas facilities: supplementary provisions**

- (1) The Secretary of State must consult a designated gas transporter and the Authority—
  - (a) before the first time the Secretary of State requires the designated gas transporter to pay any costs under section 85 or 86,
  - (b) before the first time the Secretary of State requires the designated gas transporter to pay such costs in respect of a particular gas facility, and
  - (c) where extra police services were previously provided at a particular gas facility, before the first time the Secretary of State requires the designated gas transporter to pay such costs as the result of such services being provided on a subsequent occasion.
- (2) The Secretary of State is not required—
  - (a) to take into account representations made after the end of the period of 28 days beginning with the day on which the person making the representations was consulted under subsection (1);
  - (b) to consult anyone else before requiring a designated gas transporter to pay costs under section 85 or 86.
- (3) Sections 4AA to 4A of the Gas Act 1986 (c. 44) (principal objective and general duties of the Secretary of State and the Authority) do not apply in relation to anything done or omitted by the Secretary of State or the Authority in the exercise of functions under sections 85 to 89.

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- (4) Expressions used in those sections that are defined in Part 1 of the Gas Act 1986 have the same meaning as in that Part.

**90 Application of provisions to costs incurred before commencement**

Sections 85 to 89 apply in relation to costs incurred in the period—

- (a) beginning with 16th January 2007, and  
(b) ending with the day before those sections come into force,  
as they apply in relation to costs incurred on or after that day.

PROSPECTIVE

*Appointment of special advocates in Northern Ireland*

**91 Appointment of special advocates in Northern Ireland**

- (1) In the following provisions for “Attorney General for Northern Ireland”, wherever occurring, substitute “ Advocate General for Northern Ireland ”.
- (2) The provisions are—  
section 6(2)(c) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appointment of special advocate in proceedings before the Special Immigration Appeals Commission);  
rule 9(1) of the Northern Ireland Act Tribunal (Procedure) Rules 1999 (S.I. 1999/2131) (appointment of special advocate in proceedings before the tribunal appointed under section 91 of the Northern Ireland Act 1998 (c. 47));  
paragraph 7(2)(c) of Schedule 3 to the Terrorism Act 2000 (c. 11) (appointment of special advocate in proceedings before the Proscribed Organisations Appeal Commission);  
paragraph 6(2)(c) of Schedule 6 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (appointment of special advocate in proceedings before the Pathogens Access Appeal Commission).
- (3) These amendments come into force when section 27 of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.

**PART 8**

SUPPLEMENTARY PROVISIONS

*General definitions*

**92 Meaning of “terrorism”**

In this Act “terrorism” has the same meaning as in the Terrorism Act 2000 (c. 11) (see section 1 of that Act).

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### **93 Meaning of offence having a “terrorist connection”**

For the purposes of this Act an offence has a terrorist connection if the offence—

- (a) is, or takes place in the course of, an act of terrorism, or
- (b) is committed for the purposes of terrorism.

### **94 Meaning of “ancillary offence”**

- (1) In this Act “ancillary offence”, in relation to an offence, means any of the following—
  - (a) aiding, abetting, counselling or procuring the commission of the offence (or, in Scotland, being art and part in the commission of the offence);
  - (b) an offence under Part 2 of the Serious Crime Act 2007 (c. 27) (encouraging or assisting crime) in relation to the offence (or, in Scotland, inciting a person to commit the offence);
  - (c) attempting or conspiring to commit the offence.
- (2) In subsection (1)(b) the reference to an offence under Part 2 of the Serious Crime Act 2007 includes, in relation to times before the commencement of that Part, an offence of incitement under the law of England and Wales or Northern Ireland.

### **95 Meaning of “service court” and “service offence”**

- (1) In this Act “service court” means the Court Martial, the Service Civilian Court or the Court Martial Appeal Court.
- (2) Until the commencement of the relevant provisions of the Armed Forces Act 2006 (c. 52), the following is substituted for subsection (1)—
  - “(1) In this Act “service court” means—
    - (a) a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53);
    - (b) the Courts-Martial Appeal Court; or
    - (c) a Standing Civilian Court.”
- (3) In this Act “service offence” means an offence under—
  - (a) section 42 of the Armed Forces Act 2006,
  - (b) section 70 of the Army Act 1955 or the Air Force Act 1955, or
  - (c) section 42 of the Naval Discipline Act 1957.
- (4) References in this Act to the “corresponding civil offence” in relation to a service offence are—
  - (a) in relation to an offence under section 42 of the Armed Forces Act 2006, to the corresponding offence under the law of England and Wales within the meaning of that section;
  - (b) in relation to an offence under section 70 of the Army Act 1955 or the Air Force Act 1955, to the corresponding civil offence within the meaning of that Act;
  - (c) in relation to an offence under section 42 of the Naval Discipline Act 1957, to the civil offence within the meaning of that section.

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- (5) Section 48 of the Armed Forces Act 2006 (c. 52) (supplementary provisions relating to ancillary service offences) applies for the purposes of subsection (4)(a) above as it applies for the purposes of the provisions of that Act referred to in subsection (3) (b) of that section.

### *Orders and regulations*

#### **96 Orders and regulations**

- (1) Orders and regulations under this Act must be made by statutory instrument.
- (2) Orders or regulations under this Act may—
- (a) make different provision for different cases or circumstances,
  - (b) include supplementary, incidental and consequential provision, and
  - (c) make transitional provision and savings.
- (3) Any provision that may be made by regulations under this Act may be made by order; and any provision that may be made by order under this Act may be made by regulations.

#### **97 Orders and regulations: affirmative and negative resolution procedure**

- (1) Where orders or regulations under this Act are subject to “affirmative resolution procedure” the order or regulations must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.
- (2) Where orders or regulations under this Act are subject to “negative resolution procedure” the statutory instrument containing the order or regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Provision that may be made by order or regulations under this Act for which no Parliamentary procedure is prescribed may be included in an instrument subject to negative or affirmative resolution procedure.
- (4) Provision that may be made by order or regulations under this Act subject to negative resolution procedure may be included in an instrument subject to affirmative resolution procedure.

### *Financial provisions*

#### **98 Financial provisions**

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenses of the Secretary of State under this Act, and
  - (b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.
- (2) There shall be paid into the Consolidated Fund—
- (a) any sums received by the Secretary of State under this Act, and

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- (b) any increase attributable to this Act in the sums payable into that Fund under any other Act.

VALID FROM 16/02/2009

*Repeals and revocations*

**99 Repeals and revocations**

The enactments specified in Schedule 9, which include enactments that are spent, are repealed or revoked to the extent specified.

*Final provisions*

**100 Commencement**

- (1) The provisions of this Part, except section 99 and Schedule 9 (repeals and revocations), come into force on the day this Act is passed.
- (2) Part 5 (terrorist financing and money laundering) and Part 6 (financial restrictions proceedings) come into force on the day after the day on which this Act is passed.
- (3) Sections 85 to 90 (costs of policing at gas facilities) come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (4) Section 91 (appointment of special advocates in Northern Ireland) comes into force in accordance with subsection (3) of that section.
- (5) The other provisions of this Act come into force on such day as may be appointed by order of the Secretary of State.
- (6) The Secretary of State may by order make such transitional provision and savings as appears necessary or expedient in connection with the commencement of any provision of this Act.

**101 Extent**

- (1) Except as otherwise provided—
  - (a) an amendment or repeal by this Act has the same extent as the enactment amended or repealed; and
  - (b) any other provisions of this Act—
    - (i) extend to the whole of the United Kingdom, and
    - (ii) do not extend to any country or territory outside the United Kingdom.
- (2) Nothing in this section shall be read as restricting the application of any provision of this Act in relation to service courts or service offences.

**102 Short title**

The short title of this Act is the Counter-Terrorism Act 2008.

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## SCHEDULES

VALID FROM 24/12/2008

### SCHEDULE 1

Section 20

#### DISCLOSURE AND THE INTELLIGENCE SERVICES: CONSEQUENTIAL AMENDMENTS

##### *Anti-terrorism, Crime and Security Act 2001 (c. 24)*

- 1 In section 19(2) of the Anti-terrorism, Crime and Security Act 2001 (disclosure of information held by revenue departments), omit paragraph (a).

##### *Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341)*

- 2 (1) The Representation of the People (England and Wales) Regulations 2001 are amended as follows.
- (2) In regulation 45E (supply of record of anonymous entries to the security services), omit paragraphs (3) and (4).
- (3) In regulation 102(6) (supply of full register: general restrictions on use), for “regulations 103 to 109” substitute “regulations 103 to 108 or 109”.
- (4) After regulation 108 insert—

##### **Supply of full register etc to the security services**

“108A) This regulation applies to—

- (a) the Security Service;
- (b) the Government Communications Headquarters;
- (c) the Secret Intelligence Service.

(2) For the purposes of regulation 102(1) above the relevant part of the documents listed in that provision is the whole of them.”.

- (5) In regulation 109 (supply of full register etc to police force and other agencies and restrictions on use), omit—
- (a) paragraph (1)(g) to (i);
  - (b) in paragraph (4)(a), the words preceding paragraph (i);
  - (c) paragraph (4)(b) and the word “and” immediately preceding it.
- (6) In regulation 113 (sale of full register to government departments and other bodies) —
- (a) in the closing words of paragraph (1), after “other than” insert “ a department to which regulation 108A applies or ”;

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(b) in paragraph (3) for “regulation 109(1)(g) to (i),” substitute “regulation 108A”.

(7) In regulation 115(2) (offences) omit “45E(3),”.

(8) For regulation 118(8) (provision of copies of documents open to public inspection) substitute insert—

“(8) The relevant registration officer shall, on request, supply free of charge copies of any documents open to public inspection—

(a) to each of the departments mentioned in regulation 108A;

(b) to a person who has inspected those documents and who is entitled to be supplied with a copy of the marked register or lists by virtue of being a person to whom regulation 109 applies.”.

(9) In regulation 119(3) for “regulation 118(8)” substitute “regulation 118(8)(b)”.

*Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497)*

3 (1) The Representation of the People (Scotland) Regulations 2001 are amended as follows.

(2) In regulation 45D (supply of record of anonymous entries to the security services), omit paragraphs (3) and (4).

(3) In regulation 101(6) (supply of full register: general restrictions on use), for “regulations 102 to 108” substitute “regulations 102 to 107 or 108”.

(4) After regulation 107 insert—

**Supply of full register etc to the security services**

“107A) This regulation applies to—

(a) the Security Service;

(b) the Government Communications Headquarters;

(c) the Secret Intelligence Service.

(2) For the purposes of regulation 101(1) above the relevant part of the documents listed in that provision is the whole of them.”.

(5) In regulation 108 (supply of full register etc to police force and other agencies and restrictions on use), omit—

(a) paragraph (1)(g) to (i);

(b) in paragraph (4)(a), the words preceding paragraph (i);

(c) paragraph (4)(b) and the word “and” immediately preceding it.

(6) In regulation 112 (sale of full register to government departments and other bodies)

(a) in the closing words of paragraph (1), after “other than” insert “a department to which regulation 107A applies or”;

(b) in paragraph (3) for “regulation 108(1)(g) to (i),” substitute “regulation 107A”.

(7) In regulation 115(2) (offences) omit “45D(3),”.



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- (8) For regulation 118(8) (provision of copies of documents open to public inspection) substitute—
- “(8) The relevant registration officer shall, on request, supply free of charge copies of any documents open to public inspection—
- (a) to each of the departments mentioned in regulation 107A;
  - (b) to a person who has inspected those documents and who is entitled to be supplied with a copy of the marked register or lists by virtue of being a person to whom regulation 108 applies.”.

(9) In regulation 119(3) for “regulation 118(8)” substitute “ regulation 118(8)(b) ”.

*Immigration, Asylum and Nationality Act 2006 (c. 13)*

4 In the Immigration, Asylum and Nationality Act 2006, omit section 38 (disclosure of information for security purposes).

*Statistics and Registration Service Act 2007 (c. 18)*

5 In the Statistics and Registration Service Act 2007, omit—

    - (a) section 39(4)(g) (permitted disclosure of personal information: disclosure to an Intelligence Service); and
    - (b) in section 67 (general interpretation), the definition of “Intelligence Service”.

VALID FROM 18/06/2009

SCHEDULE 2 Sections 30, 31, 33, 35 and 42

OFFENCES WHERE TERRORIST CONNECTION TO BE CONSIDERED

**Commencement Information**

**I1** Sch. 2 in force at 18.6.2009 by [S.I. 2009/1256](#), **art. 2(b)**

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VALID FROM 18/06/2009

## SCHEDULE 3

Section 39

## FORFEITURE: CONSEQUENTIAL AMENDMENTS

*Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9))*

- 1 In Article 5(3) of the Proceeds of Crime (Northern Ireland) Order 1996, after “section 23” insert “ or 23A ”.

*Terrorism Act 2000 (c. 11)*

- 2 In section 54 of the Terrorism Act 2000, omit subsections (7) to (9).
- 3 In section 58 of that Act, omit subsections (5) to (7).
- 4 In section 119(1) of that Act for “sections 15 to 23” substitute “ sections 15 to 23A ”.
- 5 (1) Schedule 4 to that Act is amended as follows.
- (2) In paragraph 1—
- (a) in the definition of “forfeiture order” after “section 23” insert “ or 23A ”;
  - (b) after the definition of “forfeited property” insert—
 

““relevant offence” means—

    - (a) an offence under any of sections 15 to 18,
    - (b) an offence to which section 23A applies, or
    - (c) in relation to a restraint order, any offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered).”.
- (3) In paragraph 2(1)(d) for “section 23(7)” substitute “ section 23B(1) ”.
- (4) In paragraph 4(2)(c) for “section 23(7)” substitute “ section 23B(1) ”.
- (5) In paragraph 5(1)(a) and (2)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (6) In paragraph 6(4)(a) and (b) for “offences under any of sections 15 to 18” substitute “ relevant offences ”.
- (7) Omit the heading before paragraph 9.
- (8) In paragraph 9(2)—
- (a) in the opening words, for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”;
  - (b) in paragraphs (a), (b) and (c), for “an offence under any of those sections” substitute “ a relevant offence ”.
- (9) In paragraph 10(1)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.

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- (10) In paragraph 12 after “section 23”, in each place where it occurs, insert “ or 23A ”.
- (11) In paragraph 15—
  - (a) in the definition of “forfeiture order” after “section 23” insert “ or 23A ”;
  - (b) after the definition of “forfeited property” insert—

““relevant offence” means—

    - (a) an offence under any of sections 15 to 18,
    - (b) an offence to which section 23A applies, or
    - (c) in relation to a restraint order, any offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered).”.
- (12) In paragraph 16(1)(c) and (4)(c) for “section 23(7)” substitute “ section 23B(1) ”.
- (13) In paragraph 18(1)(a) and (2)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (14) In paragraph 19(3A)(a) and (b) for “offences under any of sections 15 to 18” substitute “ relevant offences ”.
- (15) Omit the heading before paragraph 23.
- (16) In paragraph 23(2)—
  - (a) in the opening words for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”;
  - (b) in paragraphs (a), (b) and (c) for “an offence under any of those sections” substitute “ a relevant offence ”.
- (17) In paragraph 24(1)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (18) In paragraph 26 after “section 23”, in each place where it occurs, insert “ or 23A ”.
- (19) In paragraph 29—
  - (a) in the definition of “forfeiture order” after “section 23” insert “ or 23A ”;
  - (b) after the definition of “forfeited property” insert—

““relevant offence” means—

    - (a) an offence under any of sections 15 to 18, or
    - (b) an offence to which section 23A applies.”.
- (20) In paragraph 30(1)(d) for “section 23(7)” substitute “ section 23B(1) ”.
- (21) In paragraph 32(2)(c) for “section 23(7)” substitute “ section 23B(1) ”.
- (22) In paragraph 33(1)(a) and (2)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (23) In paragraph 34(4)(a) and (b) for “offences under any of sections 15 to 18” substitute “ relevant offences ”.
- (24) In paragraph 38(4), in the definition of “prosecutor” for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (25) Omit the heading before paragraph 39.

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- (26) In paragraph 39(2)—
    - (a) in the opening words for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”;
    - (b) in paragraphs (a), (b) and (c) for “an offence under any of those sections” substitute “ a relevant offence ”.
  - (27) In paragraph 40(1)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
  - (28) In paragraph 42 after “section 23”, in each place where it occurs, insert “ or 23A ”.
  - (29) In paragraph 45, in paragraph (a) of the definition of “forfeiture order” after “section 23” insert “ or 23A ”.
- 6 In Schedule 8 to that Act, in paragraphs 8(4)(d), 17(3)(c) and 34(2)(c) after “section 23” insert “ or 23A ”.

*Proceeds of Crime Act 2002 (c. 29)*

- 7 (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) In section 13(3)(d) after “section 23” insert “ or 23A ”.
- (3) In section 82(e) after “section 23” insert “ , 23A ”.
- (4) In section 97(3)(d) after “section 23” insert “ or 23A ”.
- (5) In section 148(e) after “section 23” insert “ , 23A ”.
- (6) In section 163(3)(d) after “section 23” insert “ or 23A ”.
- (7) In section 230(e) after “section 23” insert “ , 23A ”.

VALID FROM 01/10/2009

SCHEDULE 4

Section 57

NOTIFICATION ORDERS

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VALID FROM 01/10/2009

SCHEDULE 5

Section 58

FOREIGN TRAVEL RESTRICTION ORDERS

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**Status:** Point in time view as at 26/11/2008. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 24/04/2009

## SCHEDULE 6

Section 59

## NOTIFICATION REQUIREMENTS: APPLICATION TO SERVICE OFFENCES

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VALID FROM 27/11/2008

## SCHEDULE 7

Section 62

## TERRORIST FINANCING AND MONEY LAUNDERING

.....

VALID FROM 16/02/2009

## SCHEDULE 8

Section 76

OFFENCES RELATING TO INFORMATION ABOUT MEMBERS  
OF ARMED FORCES ETC: SUPPLEMENTARY PROVISIONS

PROSPECTIVE

The following Schedule is inserted after Schedule 8 to the Terrorism Act 2000 (c. 11)—

## “SCHEDULE 8A

## OFFENCE UNDER SECTION 58A: SUPPLEMENTARY PROVISIONS

*Introduction*

- 1 (1) This Schedule makes supplementary provision relating to the offence in section 58A (eliciting, publishing or communicating information about members of the armed forces etc).
- (2) The purpose of this Schedule is to comply with Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“the E-Commerce Directive”).

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*Domestic service providers: extension of liability*

- 2 (1) This paragraph applies where a service provider is established in the United Kingdom (a “domestic service provider”).
- (2) Section 58A applies to a domestic service provider who—
- (a) commits any of the acts specified in subsection (1) of that section in an EEA state other than the United Kingdom, and
  - (b) does so in the course of providing information society services, as it applies to a person who commits such an act in the United Kingdom.
- (3) In such a case—
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.

*Non-UK service providers: restriction on proceedings*

- 3 (1) This paragraph applies where a service provider is established in an EEA state other than the United Kingdom (a “non-UK service provider”).
- (2) Proceedings for an offence under section 58A must not be brought against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the following conditions are met.
- (3) The conditions are—
- (a) that the bringing of proceedings is necessary for one of the following reasons—
    - (i) public policy,
    - (ii) public security, including the safeguarding of national security and defence;
  - (b) that the proceedings are brought against an information society service that prejudices the objectives referred to in paragraph (a) or presents a serious and grave risk of prejudice to those objectives;
  - (c) that the bringing of the proceedings is proportionate to those objectives.

*Exceptions for mere conduits*

- 4 (1) A service provider is not guilty of an offence under section 58A in respect of anything done in the course of providing so much of an information society service as consists in—
- (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service,
- if the following condition is satisfied.
- (2) The condition is that the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.

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- (3) For the purposes of sub-paragraph (1)—
- (a) the provision of access to a communication network, and
  - (b) the transmission of information in a communication network,
- includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

- 5 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider is not guilty of an offence under section 58A in respect of the automatic, intermediate and temporary storage of information so provided, if—
- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the following conditions are satisfied.
- (3) The first condition is that the service provider does not modify the information.
- (4) The second condition is that the service provider complies with any conditions attached to having access to the information.
- (5) The third condition is that if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information,
- the service provider expeditiously removes the information or disables access to it.

*Exception for hosting*

- 6 (1) A service provider is not guilty of an offence under section 58A in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if the condition is met.
- (2) The condition is that—
- (a) the service provider had no actual knowledge when the information was provided that it contained offending material, or
  - (b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.
- (3) “Offending material” means information about a person who is or has been—
- (a) a member of Her Majesty's forces,

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- (b) a member of any of the intelligence services, or
- (c) a constable,

which is of a kind likely to be useful to a person committing or preparing an act of terrorism.

- (4) This paragraph does not apply if the recipient of the service is acting under the authority or control of the service provider.
- (5) In this paragraph “the intelligence services” means the Security Service, the Secret Intelligence Service and GCHQ (within the meaning of section 3 of the Intelligence Services Act 1994 (c. 13)).

### *Interpretation*

#### 7 (1) In this Schedule—

“information society services”—

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“recipient”, in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“service provider” means a person providing an information society service.

- (2) For the purposes of this Schedule whether a service provider is established in the United Kingdom, or in some other EEA state, shall be determined in accordance with the following provisions—
  - (a) a service provider is established in the United Kingdom, or in a particular EEA state, if the service provider—
    - (i) effectively pursues an economic activity using a fixed establishment in the United Kingdom, or that EEA state, for an indefinite period, and
    - (ii) is a national of an EEA state or a company or firm mentioned in Article 48 of the EEC Treaty;
  - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
  - (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.”.



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VALID FROM 16/02/2009

SCHEDULE 9

Section 99

REPEALS AND REVOCATIONS

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**Status:**

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