

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Post-Charge Questioning of Terrorist Suspects

Section 22 – Post-charge questioning: England and Wales

65. *Subsection (2)* allows a judge of the Crown Court to authorise questioning of a person in England and Wales about an offence, for which they have been charged or after they have been officially informed that they may be prosecuted, where the offence was a terrorism offence (as defined in section 27) or where the judge considers the offence to have a terrorist connection (as defined in section 93).
66. *Subsection (3)* provides that the judge authorising post-charge questioning must specify the period during which questioning is authorised and 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.
67. *Subsection (4)* specifies that the time period for which questioning is authorised begins when questioning commences and runs continuously from that time irrespective of whether or not questioning stops. *Subsection (4)(b)* limits the period for which a judge can authorise questioning to a maximum of 48 hours before further authorisation must be sought.
68. *Subsection (5)* allows the judge to authorise the removal of a suspect to another place for the purposes of questioning. For example, this would allow a judge to authorise a suspect's removal from a prison to a police station for questioning.
69. *Subsection (6)* provides that a judge can authorise post-charge questioning under this section only if satisfied that further questioning of the person is necessary in the interests of justice, that the police investigation related to the suspect is being conducted diligently and expeditiously, and that it would not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge. Undue interference might arise for example if authorisation for questioning is sought too near to the time of the trial.
70. *Subsections (7) and (8)* provide that codes of practice under section 66 of PACE must make provision about post-charge questioning.
71. *Subsection (9)* extends the application of section 34(1) of the Criminal Justice and Public Order Act 1994, which allows adverse inferences to be drawn from an accused person's failure to mention facts when questioned, to cover post-charge questioning under this section.