

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Prosecution and Punishment of Terrorist Offences

Jurisdiction

Section 28 – Jurisdiction to try offences committed in the UK

84. *Section 28* provides for UK-wide jurisdiction for specified terrorism offences, regardless of where in the UK the offence took place. The purpose of this section is to remove the need to have separate trials for connected terrorist offences which occur in different jurisdictions within the UK. The common law currently provides that a significant part of an offence must take place within the part of the UK in which the court trying the offence is located. *Subsection (2)* sets out the offences to which this provision is to apply. These are the offence under section 113 of the Anti-Terrorism, Crime and Security Act 2001 and all offences under the 2000 and 2006 Terrorism Acts (other than those with an extra-territorial element and those that do not have UK-wide extent). This provision will also apply to the ancillary offences associated with the offences listed in *subsection (2)* by virtue of the general law which provides that jurisdiction for an ancillary offence follows that for the substantive offence.
85. *Subsections (3) and (4)* allow the Secretary of State to amend the list of terrorism offences in *subsection (2)* by order (subject to the affirmative resolution procedure), and *subsection (5)* provides that an offence may only be added in this way if it appears to the Secretary of State necessary to do so for the purpose of dealing with terrorism. This means that where an offence under the general criminal law is added to this section by order, the jurisdiction provided by the section will only apply where such an offence is being used in a terrorism case. At report stage in the House of Commons the then Minister of State for policing, crime and security in the Home Office, Mr Tony McNulty, said that this section and any offences added under the order-making power will apply only in relation to offences committed on or after the coming into force of the relevant provision (Hansard, 10 June 2008: Column 226 – 227).
86. *Subsection (6)* inserts a new *subsection (6A)* into section 1 of the Justice and Security (Northern Ireland) Act 2007. Section 1 of that Act allows for a non-jury trial in Northern Ireland where certain conditions are met. This new subsection precludes the Director of Public Prosecutions for Northern Ireland from issuing a certificate for a non-jury trial where the proceedings are only taking place in Northern Ireland as a result of the jurisdiction provided by section 28 and the only condition which would enable a non-jury trial to take place is the fourth condition of section 1 of the 2007 Act. This means a prosecution in Northern Ireland arising from the jurisdiction provided by section 28 could only be by way of a non-jury trial where the offence had a connection to a proscribed terrorist organisation whose activities are connected with the affairs of Northern Ireland (in the ways set out in conditions 1 to 3 in section 1 of the 2007 Act) and the Director of Public Prosecutions for Northern Ireland was satisfied that in view

*These notes refer to the Counter-Terrorism Act 2008
(c.28) which received Royal Assent on 26 November 2008*

of this there was a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.