

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Notification Requirements

Section 40 – Scheme of this Part

113. This is an introductory section relating to the new notification scheme for convicted terrorists (aged 16 or over on the date of their being dealt with), given a relevant sentence (broadly, at least 12 months' imprisonment), and the related orders.

Offences to which this Part applies: terrorism offences

Section 41 – Offences to which this Part applies: terrorism offences

114. This section specifies a number of terrorism offences, and their associated ancillary offences, to which this Part of the Act applies. It also provides the Secretary of State with an order-making power to amend this list of offences, subject to the affirmative resolution procedure and to transitional provisions.

Section 42 – Offences to which this Part applies: offences having a terrorist connection

115. This Part of the Act also applies to offences under the general law set out in Schedule 2 which have a terrorist connection (as defined in section 93).
116. *Subsection (1)* provides that the notification provisions apply when a court in England and Wales or in Scotland has determined that an offence has a terrorist connection in accordance with section 30 or 31 (sentences for offences with a terrorist connection). Since the Act does not contain corresponding provision for Northern Ireland on aggravated sentencing for offences with a terrorist connection, the notification provisions will apply in Northern Ireland only to terrorism offences falling within section 41.
117. *Subsection (2)* provides a right of appeal against a determination by a court in England and Wales that the offence has a terrorist connection. Such an appeal may also be made by way of the usual right of appeal against sentence, but this provision is to enable a person to appeal against the determination alone.
118. *Subsection (3)* provides that if such an appeal is successful, the notification requirements are treated as never having applied. This means that any breach of the requirements before the successful appeal would not be prosecuted.
119. *Subsection (4)* provides that where an offence is removed from the list of offences in Schedule 2 by way of order, the notification requirements will cease to apply to a person subject to them by virtue only of a conviction for that offence, with effect from the date the order comes into force.

Section 43 – Offences dealt with before commencement

120. **Section 43** provides for the application of the notification requirements to persons convicted of a triggering terrorism offence prior to the commencement of Part 4 (provided the person was aged 16 or over on the date they were dealt with and was given a relevant sentence - broadly, 12 months' or more imprisonment.) The requirements will only apply to such a person if immediately before commencement the person is imprisoned or detained for the triggering offence (or would have been but for being unlawfully at large or otherwise temporarily out of custody) or is on licence in respect of that offence. This retrospective application does not apply to offences with a terrorist connection as there will have been no determination to this effect by the court prior to commencement.

Persons to whom the notification requirements apply

Section 44– Persons to whom the notification requirements apply

121. The effect of section 44 is that the notification requirements do not apply to anyone under the age of 16 on the date of their being dealt with by the court in a way which would otherwise trigger those requirements.

Section 45 – Sentences or orders triggering notification requirements

122. **Section 45** provides that the notification requirements apply to a person who: (a) is convicted of a relevant offence and receives a sentence of imprisonment or detention for a period or term of 12 months or more in relation to that offence (including life and indeterminate sentences); or (b) is convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged in respect of such an offence punishable by 12 months' imprisonment or more and is made subject to a hospital order. The section sets out all the different types of sentences that could be given in each jurisdiction of the UK for 12 months or more, all of which will trigger the notification requirements when given for a relevant offence.

Section 46 – Power to amend specified terms or periods of imprisonment or detention

123. **Section 46** allows the Secretary of State to change the sentence threshold for a person to be subject to the notification requirements (currently 12 months) by an order subject to the affirmative resolution procedure. The order will have effect subject to the transitional provisions described in *subsection (3)*.

Notification requirements

Section 47– Initial notification

124. **Section 47** sets out the information the person must supply to the police when first making a notification and the time scales within which that notification must be made. *Subsection (1)* provides that an individual must notify the police of the specified information within three days beginning with the day the person was dealt with for the offence or, where these provisions have retrospective application, within three days of the commencement of Part 4. In calculating the period within which an offender must give notification under *subsection (1)*, any time when the offender meets the conditions in *subsection (4)* – for instance any time when he is serving a sentence of imprisonment – does not count. As a person will usually be sent straight to prison (or hospital) following their conviction for a relevant offence, this will usually mean that the person will have to make their initial notification within three days of their release. *Subsection (6)* provides that where the notification requirements apply by virtue of a conviction prior to the commencement of this Part and the person is not still in prison or otherwise detained, initial notification must be given within 3 days of commencement.

125. *Subsections (2) and (3)* set out the information which is required from the person subject to the notification requirements, and includes the person's name (or names) and home address (or addresses), date of birth and national insurance number and any information prescribed in regulations. The definition of "home address" is found in section 60. This provides that where an offender is homeless or has no fixed abode his "home address" means an address or location where he can be regularly found. This might, for example, be a shelter, a friend's house or a park bench.
126. *Subsection (5)* relates to a case where a person who receives a triggering conviction and sentence is already subject to the notification requirements by virtue of an earlier offence. If in these circumstances the person has made an initial notification in accordance with *subsection (1)* in respect of the earlier offence, he is not required to make an initial notification again in accordance with *subsection (1)*. However, this applies only where the notification period in respect of the earlier offence lasts throughout the period specified in *subsection (1)*, as extended in accordance with *subsection (4)* if appropriate.

Section 48 – Notification of changes

127. *Section 48* sets out the requirement on a person to notify the police of changes to the details they have already notified. This includes the requirement in *subsection (3)* that a person who stays at an address in the UK for a period of seven days or for a combined period of seven days within 12 months, must notify the police of this address. This might apply for example where the person stays at a friend or relative's house or a hotel in the UK for this length of time.
128. *Subsection (4)* provides that a person who is subject to the notification requirements who is released from custody, released from imprisonment or detention pursuant to a sentence of a court, released from detention in hospital or detention under Immigration Acts must notify the police of this fact. This will mean for example that where a person who was given a suspended sentence subsequently has that sentence activated, the person must notify the police on release from prison. Section 60 defines "release" as including release on licence but not temporary release.
129. *Subsections (7) and (8)* provide that notification of any changes must be made before the end of the period of three days following the events specified in this section. Where the event is residing or staying at other premises as described in *subsection (3)* then the three day notification period begins when the seven day period set out in that subsection ends. When determining the period within which notification is to be given under this section, any periods spent in custody, imprisonment, detention or detained in a hospital or immigration detention are to be disregarded.
130. *Subsection (10)* provides that any notification under this section must be accompanied by the other information given to the police at the initial notification.

Section 49 – Periodic re-notification

131. *Section 49* provides that one year after the initial notification, a notification of change, a notification under this section, or a notification on return after absence from the UK, the individual must re-notify the police of the information specified in section 47(2). The effect of this section is that the person must re-notify their details to the police at least annually. However, the requirement does not apply if an individual is in custody by an order of a court, serving a sentence of imprisonment or detention, detained in a hospital, or detained under Immigration Acts on the date on which they are due to re-notify: in those circumstances the person is required to notify under section 48 (notification of changes) on their release (*subsections (2) and (3)*). These subsections are to ensure the person is not subject to overlapping requirements.

Section 50 – Method of notification and related matters

132. This section describes how and where a person is required to notify information to the police under the provisions relating to initial notification, notification of change, periodic re-notification and notification on return after absence from the UK. *Subsection (2)* provides that the person must notify by attending a police station in the person's local police area (as defined in section 51) and making an oral notification to a police officer or other person authorised by the officer in charge of the station. Where the person is away from their usual home address for a period of seven days or a period amounting to seven days during a year, then they can notify at a police station local to their temporary address (*subsection (3)*).
133. The police must acknowledge the notification by the person in writing and in the form specified by the Secretary of State (*subsections (4) and (5)*).
134. *Subsection (6)* allows the police to take fingerprints from the person making the notification and to photograph any part of the person for the purpose of verifying their identity. "Photograph" is defined for these purposes in section 60 and could include for example taking an iris scan.

Section 51 – Meaning of "local police area"

135. *Section 51* defines "local police area" for the purposes of section 50(2) (method of notification). *Subsections (1)(b) and (c)* deal with cases where the person has no home address (as defined in section 60). A person may have no home address because for example they spend most of their time abroad and only return to the UK occasionally, or because they are itinerant.

Section 52 – Travel outside the United Kingdom

136. *Section 52(1)* provides a power for the Secretary of State to make regulations setting out additional notification requirements for persons subject to the notification scheme in relation to foreign travel.
137. *Subsection (2)* sets out details the person must notify to the police concerning their departure (such as date of departure, the country the person is travelling to and their point of arrival) and allows the regulations to prescribe further details that must be given. *Subsection (3)* concerns the details that must be disclosed about the person's return to the UK: these will be given in the regulations.
138. *Subsections (4) and (5)* provide that a notification under this section must be made in accordance with the regulations; and that the regulations are subject to the affirmative resolution procedure.

Period for which notification requirements apply

Section 53 – Period for which notification requirements apply

139. *Section 53* sets out the period during which a person will be subject to the notification requirements. The notification period for those aged 18 or over on the date of conviction for the triggering offence is: 30 years for those sentenced to 10 or more years' imprisonment or detention (including life or indeterminate sentences); 15 years for those sentenced to 5 or more years' but less than 10 years' imprisonment or detention; and 10 years in any other case, which includes adults sentenced to 12 months' or more but less than 5 years' imprisonment or detention, persons made subject to a hospital order and persons aged 16 or 17 on the date of their conviction (regardless of the sentence they are given).
140. The notification period starts with the day on which the person is dealt with for the offence (*subsection (4)*). However, *subsection (7)* provides that in determining whether the notification period has expired, any time the individual has spent in custody by

order of a court, serving a sentence of imprisonment or detention, or detained in hospital or under the Immigration Acts shall be discounted. This means for example that where a person whose sentence attracts a notification period of 10 years goes to prison immediately following sentence, the 10 years will in effect run from the date the person is released.

- 141. *Subsection (5)* describes how the notification period operates in respect of a person who has been found to be under a disability but who is subsequently tried for the offence.
- 142. *Subsection (6)* specifies how to calculate the notification period where a person is sentenced for more than one terrorist-related offence and these sentences are terms of imprisonment running consecutively or partly concurrently. Where the terms are consecutive, they are to be added together. For example, where a person is sentenced to 4 years' imprisonment for one terrorist-related offence and 10 years' imprisonment for another such offence, to run consecutively, the sentence would be treated as 14 years' imprisonment for the purposes of working out the notification period (in this case, 30 years). Terms will be partly concurrent when they are imposed on different occasions. An example would be where a person is sentenced to 2 years' imprisonment for a terrorist-related offence, and 6 months into this term the person is sentenced to 4 years' imprisonment for a second such offence. Where this is the case, the notification period is based on the combined length of the terms minus any overlapping period. In the example given, the combined length of the sentences would be 6 years and the overlapping period would be the remaining 18 months of the 2-year sentence. So the sentence for the purposes of working out the notification period would be four and a half years (resulting in a 10 year notification period).

Offences in relation to notification

Section 54 – Offences relating to notification

- 143. Under section 54, failure without reasonable excuse to comply with any of the notification requirements, or providing false information in relation to any of the requirements, constitutes an offence. A reasonable excuse might be where a person does not notify within the required timescale because they are in hospital following an accident. Such an offence is an either way offence with a maximum sentence of five years' imprisonment (*subsection (2)*). *Subsection (4)* provides that the offence of failing to give a notification continues throughout the period during which the required notification is not given, but a person cannot be prosecuted more than once for the same failure. However if a person fails to comply with a requirement, is convicted for this offence and then fails to comply again in respect of the same requirement, that person commits a new offence and may be prosecuted again.
- 144. *Subsection (5)* provides that the offence may be tried in a court with jurisdiction in a place where the person resides or is found. The "is found" limb is to cover the case of a person with no fixed abode.

Section 55 – Effect of absence abroad

- 145. *Section 55* sets out how the notification requirements apply when a person subject to those requirements spends time abroad, either voluntarily or following removal by the authorities, for example having been deported or extradited.
- 146. The notification period continues to run whilst the person is outside the UK (*subsection (2)*).
- 147. *Subsections (3) and (4)* mean that a person must make their initial notification under section 47 before their departure unless that departure is a result of being removed from the United Kingdom by the authorities and the removal takes place before the expiry of the 3 day period within which such notification is to be given. "Removal from the United Kingdom" includes a person being removed or deported under the Immigration

Acts, being extradited or being transferred under a repatriation of prisoners' agreement (*subsection (9)*). In those cases the person does not have to make their initial notification unless and until they return to the UK within the currency of the applicable notification period (see section 56(1)).

148. *Subsection (5)(a)* requires a person to notify the police of any changes to their details in accordance with section 48 before their departure overseas. This does not apply however where the person's departure is a result of being removed from the UK before the end of the period in which they were due to notify of any changes under section 48 (*subsection (6)*). Subsections (*5)(b)* and (*7*) provide that the requirement under section 48 to notify changes to notified information and the requirement under section 49 to make periodic re-notification do not apply during the period of absence abroad.
149. *Subsection (8)* has the effect that any periods during which a person is in custody, imprisonment, detention or is detained in hospital or immigration detention outside the United Kingdom, are to be discounted when determining whether the notification period has expired. (Section 53(7) makes provision for time spent in such custody, imprisonment or detention in the UK to be discounted from the notification period).

Section 56 – Notification on return after absence from UK

150. *Section 56* provides that a person must within 3 days of their return from abroad, provided their notification period has not expired, make a full notification to the police (of all the information listed in section 47(2)) if: (a) they were not required to make an initial notification by reason of being removed from the United Kingdom before such notification was due; (b) there has been any change to the information last given to the police; or (c) periodic re-notification fell due during the period of absence (*subsections (1)* and (*2*)). The 3 day period within which notification must be made is extended by any period the person is in custody by an order of a court, serving a sentence of imprisonment or detention, detained in a hospital, or detained under Immigration Acts (*subsection (3)*). The requirement to notify under this section does not apply if the person is removed from the United Kingdom within 3 days of their return from overseas (*subsection (4)*). *Subsection (5)* makes it clear that the requirement to notify under this section is in addition to the requirement to notify in accordance with regulations concerning foreign travel notification made under section 52.

Supplementary provisions

Section 57 – Notification orders

151. This section gives effect to Schedule 4 to the Act, which makes provision for notification orders. The police may apply for such an order in respect of an individual dealt with outside the UK for an offence which corresponds to one which would trigger the notification requirements in the United Kingdom, and its effect is to make such a person subject to the notification requirements of Part 4.

Schedule 4 – Notification Orders

152. *Schedule 4* makes provision for notification orders. A notification order might be sought in respect of a national of the United Kingdom who has been convicted of a foreign terrorism offence and who is deported to the United Kingdom on release from prison abroad. It might also be sought in respect of a foreign national with such a conviction who is in or is coming to the United Kingdom.
153. *Paragraph 2* defines “corresponding foreign offence” (those offences a conviction for which may trigger an application being made for a notification order). These are acts which constitute an offence in the jurisdiction in which they are committed and which “correspond to an offence to which this Part applies”. This means that it would have been an offence under section 41 if committed in the United Kingdom (terrorism

offences which, subject to the sentence threshold, automatically trigger the application of the notification requirements) or an offence with a terrorist connection.

154. *Paragraph 2(4)* provides that, on an application for a notification order, it will be deemed that an act corresponds to an offence to which Part 4 applies unless the person serves a notice disputing this and requiring the applicant to prove it or if the court allows the person to require such proof without the serving of a notice.
155. *Paragraph 3* sets out the three conditions for making a notification order. First, an individual must have been convicted of a corresponding foreign offence or been subject to a finding equivalent to one of insanity or disability and given a sentence or hospital order equivalent to that required for the notification requirements to apply where the conviction or relevant finding was in the UK (as set out in section 45). However, this condition is not met if the court is satisfied on the balance of probabilities that the foreign conviction, which is the basis for the application, was obtained as a result of a flagrant denial of the person's right to a fair trial (*paragraph 3(3)*). The concept of a "flagrant" denial of the right to a fair trial derives from case law of the European Court of Human Rights, which has also been adopted in the domestic courts. The term is to be read as having the same meaning which it is given by that jurisprudence, rather than having its dictionary meaning (see for example the case of *EM (Lebanon) v Secretary of State for the Home Department* [2008] UKHL 64).
156. The second condition, specified in *paragraph 3(4)*, is that the sentence must either have been imposed after the commencement of Part 4, or when the Part was commenced the individual was imprisoned or detained as a result of that sentence, or would have been but for being unlawfully at large or otherwise temporarily out of custody or was on licence or equivalent. The third condition is that the period for which a person would be subject to the notification requirements under section 53 has not expired (*paragraph 3(5)*).
157. A court must make a notification order if these three conditions are met (*paragraph 3(6)*).
158. *Paragraph 4* sets out the circumstances in which the police may apply for a notification order and the procedure to be followed in England and Wales. The application must be made by the chief officer of police for the area where the individual resides, or where the officer believes the person is or intends to come. This would enable, for example, the chief officer of Kent Police to make an application in respect of a person who is currently in France but who is believed (by the chief officer) to have plans to arrive in Dover within the next few days. The application is to be made to the High Court.
159. *Paragraphs 5 and 6* make corresponding provision for Scotland and Northern Ireland. In Scotland, the application is to be made to the Court of Session.
160. *Paragraph 8* sets out the modifications to the notification provisions necessary to ensure they apply correctly in relation to a case where they apply by virtue of a notification order. In particular, section 47 (initial notification) is modified so that the requirement is for initial notification to be made within 3 days of the order being served.

Section 58 – Foreign travel restriction orders

161. This section gives effect to Schedule 5, which makes provision for foreign travel restriction orders which may, in specified circumstances, be made in respect of a person subject to the notification requirements.

Schedule 5 – Foreign Travel Restriction Orders

162. *Paragraph 1* of Schedule 5 introduces the concept of a foreign travel restriction order. Such an order may be made in respect of an individual subject to the notification requirements. This is a preventative order under which the court may prohibit the person from travelling abroad where this is necessary to prevent the person from engaging in

terrorism activity abroad. The order may only impose such restrictions on travel as are necessary for such prevention.

163. *Paragraph 2* sets out the conditions for making a foreign travel restriction order. If the court is satisfied that these are met, it may make an order. First, the person must be subject to the notification requirements (including by virtue of a notification order). Second, the person must, since being dealt with for the offence, have behaved in a way that makes it necessary to prevent that person from taking part in terrorism activity outside the United Kingdom. “Terrorism activity” is defined in *paragraph 16* of this Schedule. In the case where the notification requirements apply to persons convicted etc before commencement, the person’s behaviour must have taken place since commencement. The standard of proof in respect of the behaviour of which the court must be satisfied will be the heightened civil standard described in *R v Crown court of Manchester ex parte McCann* ([2002] UKHL39) as being virtually indistinguishable from the criminal one.
164. *Paragraph 3* sets out the circumstances in which the police may apply to a magistrates’ court for a foreign travel restriction order and the procedure for doing so in England and Wales. *Paragraphs 4 and 5* make corresponding provisions for Scotland and Northern Ireland.
165. *Paragraph 6* provides that a foreign travel restriction order may prevent the person subject to it from travelling to any country outside the UK which is named or described in the order, travelling to any country outside the UK other than the countries named in the order (this may be used, for example, where the person is banned from travelling anywhere in the world other than to a named country which he may need to visit for family reasons) or travelling to any country outside the United Kingdom. A person subject to an order prohibiting all foreign travel must surrender all their passports at the police station specified in the order on or before the order takes effect or within a specified time. The person’s passports must be returned as soon as is reasonably practicable after the order ceases to have effect. “Passport” is defined in section 60 and includes both foreign and UK passports and other travel documents.
166. *Paragraph 7* provides that the foreign travel restriction order lasts for a fixed period of not more than 6 months, to be specified in the order, and that where the person is already subject to a foreign travel restriction order, the earlier order ceases to have effect.
167. *Paragraphs 8* sets out provisions permitting the variation, renewal or discharge of a foreign travel restriction order in England and Wales. A person may wish to apply for a variation of their order if for example the order prohibits travel to a particular country but during the course of the order the person has to attend an urgent business meeting there. The police may wish to apply for a renewal of an order if, on the expiry of the previous order, they still have cause to believe that the person poses a risk of becoming involved in terrorism activity abroad. Any of the persons specified in *paragraph 8(1)* may make an application for an order varying, renewing or discharging a foreign travel restriction order.
168. *Paragraph 8(2)* provides that an application for variation, renewal or discharge may be made to the court which made the original order; or to a magistrates’ court in the area where the subject of the order resides (this will generally be the case where the subject of the order is making the application); or to any magistrates’ court in the police area of the chief officer of police if the police are making the application.

Paragraph 8(4) provides that the court considering the application must hear any person mentioned in *paragraph 8(1)* who wishes to be heard. Having done so, *paragraph 8(3)* allows the court to make any order varying, renewing or discharging the order it considers appropriate, subject to the restrictions in *paragraph 11*. *Paragraphs 9 and 10* make corresponding provision for Scotland and Northern Ireland.

169. *Paragraph 11* provides that a foreign travel restriction order may only be renewed or varied so as to contain prohibitions necessary to prevent the person subject to the order from taking part in terrorism activities outside the UK.
170. *Paragraph 12* provides, for England and Wales, a right of appeal to the Crown Court for the person subject to the order against (a) the making of a foreign travel restriction order or (b) against the making of an order varying, renewing or discharging a foreign travel order, or a refusal to make such an order. *Paragraphs 13 and 14* make corresponding provision for Scotland and Northern Ireland.
171. *Paragraph 15* makes it an offence for a person to, without reasonable excuse, breach any prohibition or fail to comply with a requirement contained within a foreign travel restriction order. *Paragraph 15(4)* provides that the court cannot make an order for conditional discharge where someone is convicted of this offence in England and Wales or Northern Ireland, or a probation order where the conviction is in Scotland.

Section 59– Application of Part to service offences and related matters

172. This section gives effect to Schedule 6 to the Act which provides that the notification provisions in Part 4 apply to persons dealt with in service courts in the same way they do to persons dealt with in civilian courts.

Schedule 6 – Notification Requirements: Application to Service Offences

173. This Schedule makes provision for the application of the notification requirements in Part 4 of the Act to offences in Armed Forces legislation (service offences). The Schedule prescribes which service offences the notification requirements will apply to, and the sentences and orders made by service courts which will trigger the notification requirements.

Section 60 – Minor definitions for Part 4

174. *Section 60* provides definitions of terms used in Part 4, including in Schedules 5 and 6.

Section 61 – References to a person being “dealt with” for an offence

175. *Section 61* defines what is meant by the various references in Part 4 to a person or an offence being “dealt with”.
176. Generally, this term is to mean when the court of first instance sentences a person or makes the person subject to a hospital order in respect of the offence (*subsections (1), (2) and (4)*).
177. However, *subsection (3)* makes provision for circumstances where the original decision is varied (for example the original sentence being altered, set aside or quashed (*subsection (7)*)). Where a conviction for a different offence is substituted and the conditions for the application of the notification requirements are also met in respect of that substitution, the person will be treated as if they had been dealt with at the time of the original decision. Otherwise, if the result of the variation is that the sentence threshold is not met, the notification requirements will be treated as never having applied; and if the sentence meets the threshold for the first time, the notification requirements will apply from the date of the variation. If the sentence is varied across one of the sentence thresholds for the notification periods that apply to adults, the notification period will be adjusted accordingly. *Subsections (5) and (6)* set out how the term “dealt with” is to be interpreted in the provisions relating to offences dealt with prior to commencement.