

COUNTER-TERRORISM AND SECURITY ACT 2015

EXPLANATORY NOTES

PART 6: AMENDMENTS OF OR RELATING TO THE TERRORISM ACTS

Summary and Background

216. Sections 15 to 18 of the Terrorism Act 2000 criminalise instances of terrorist financing. It is a criminal offence to provide, use or possess funds or property where an individual intends or has reasonable cause to suspect that such funds or property will be used for the purposes of terrorism. It is also an offence to enter into an arrangement where an individual intends or has reasonable cause to suspect that funds or property will be made available for the purposes of terrorism as a result of that arrangement.
217. With kidnap and ransom insurance the expectation that a ransom payment might be reimbursed might create an environment which facilitates the payment of terrorist ransoms. The provision in this Act makes clear that insurers may not reimburse ransom payments made to terrorists. This provision creates a new offence which explicitly prohibits the reimbursement of a payment which insurers know or have reasonable cause to suspect has been made in response to a terrorist demand.
218. Schedule 7 to the Terrorism Act 2000 (“Schedule 7”) allows an examining officer (defined in paragraph 1(1) of Schedule 7) to stop, question and, when necessary, detain and search, individuals travelling through ports, airports, international rail stations or the border area to determine whether that person appears to be someone who is or has been involved in the commission, preparation or instigation of acts of terrorism.
219. [Schedule 7](#) also contains a power, in paragraph 9, for examining officers to examine goods to which that paragraph applies for the purpose of determining whether they have been used in the commission, preparation or instigation of acts of terrorism. The power to examine goods applies to (a) goods which have arrived in or are about to leave Great Britain or Northern Ireland on a ship or vehicle, and (b) goods which have arrived at or are about to leave any place in Great Britain or Northern Ireland on an aircraft (whether the place they have come from or are going to is within or outside Great Britain or Northern Ireland). Goods are defined in paragraph 9(3) as property of any description, and containers. The provisions in Schedule 8 to this Act contain measures which clarify this goods examination power.

Commentary on Sections

Section 42: Insurance against payments made in response to terrorist demands

220. *Subsection (1)* makes it an offence under the Terrorism Act 2000 for an insurer under an insurance contract to make a payment to an insured party where the insurer knows, or has reasonable cause to suspect, that the payment is made in respect of money or property that has been, or is to be, handed over in response to a demand made wholly or partly for the purposes of terrorism. “Terrorism” in these circumstances is defined in

section 1(1) of the Terrorism Act 2000, as use or threat of action designed to influence the Government or to intimidate the public or a section of the public; and is done for the purpose of advancing a political, religious, racial or ideological cause.

221. “Insurance contract” is defined for the purposes of the offence and includes reinsurance. The definition follows that contained in International Financial Reporting Standard (IFRS) 4. IFRS is a single set of accounting standards, developed and maintained by the International Accounting Standards Board with the intention of those standards being capable of being applied on a globally consistent basis—by developed, emerging and developing economies. Consequently, IFRS 4 contains an industry accepted definition of “insurance contract” and extends to reinsurance contracts.
222. Liability for this offence arises in the case of a body corporate, where knowledge or suspicion is attributable either to the directing minds of the body corporate or to the person who authorised the payment. Additionally, individual liability arises in respect of any individual who aids and abets an offence by a body corporate, or in the case of senior officers, where they have consented to or connived in the offence, or the offence is attributable to any neglect on their part.
223. Section 63 of the Terrorism Act 2000 applies to this offence, which means that the offence will have extra-territorial application in the same way that the terrorist finance offences at sections 15 to 18 more generally have extra-territorial application. Consequently, arrangements made to conduct financial transactions outside the UK are liable to be caught.
224. If a person is found guilty of the offence and convicted on indictment the penalty is a prison term to a maximum of 14 years and/or a fine. If found guilty on summary conviction, the penalty is a prison term to a maximum of 6 months and/or a fine.
225. *Subsection (2)* provides that where a person is convicted of this new offence the court may order the forfeiture of the amount reimbursed by the insurer to the insured (as part of the contract between them). This *subsection* amends section 23 of the Terrorism Act 2000.
226. *Subsection (3)* provides that the offence will apply in respect of insurance contracts that had been entered into prior to Royal Assent. It also applies in respect of money (such as ransom payments) or other property that had been handed over before Royal Assent, subject to the proviso that it does not apply in relation to a ransom made before 27 November 2014, when the intention to legislate to this effect was announced publicly (*subsection (4)*).

Section 43: Port and border controls: power to examine goods

227. **Section 43** introduces Schedule 8.
228. *Paragraph 1* of Schedule 8 to the Act amends Schedule 7 to the Terrorism Act 2000 by inserting five new sub-paragraphs after paragraph 9(2) which expressly provide for the locations in which any examination of goods under paragraph 9 may take place.
229. New sub-paragraph (2A) of paragraph 9 provides that the reference in sub-paragraph (2) (a) to goods about to leave Great Britain or Northern Ireland on a ship includes goods which are held at premises operated by a “sea cargo agent” and are to be delivered to a place in Great Britain or Northern Ireland for carriage on a ship. Paragraph 1(3) of Schedule 8 provides that “sea cargo agent” has the meaning given by section 41(1) of the Aviation and Maritime Security Act 1990.
230. New sub-paragraph (2B) of paragraph 9 provides that the reference in sub-paragraph (2) (b) to goods about to leave any place in Great Britain or Northern Ireland on an aircraft includes goods which are held at premises operated by an “air cargo agent” and are to be delivered to a place in Great Britain or Northern Ireland for carriage by an aircraft.

Paragraph 1(3) of Schedule 8 provides that “air cargo agent” has the meaning given by section 21F(1) of the Aviation Security Act 1982.

231. The effect of these two new sub-paragraphs is to ensure that the Schedule 7 goods examination power can be used to examine goods held in such premises which are not immediately about to leave Great Britain or Northern Ireland but are held by air and sea cargo agents pending the goods’ departure.
232. New sub-paragraph (2C) expressly limits the locations in which the Schedule 7 power can be exercised to (a) ports; (b) air and sea cargo agents’ premises; (c) “transit sheds” (*paragraph 1(3)* of Schedule 8 provides that this term has the meaning given by section 25A of the Customs and Excise Management Act 1979); and (d) any place which the Secretary of State has designated as a place in which goods can be examined under paragraph 9 of Schedule 7.
233. “Transit sheds” are temporary storage facilities, approved by the Commissioners of Her Majesty’s Revenue and Customs, which are used to hold goods which have been imported and not yet cleared out of charge. They include facilities which are beyond port boundaries so new sub-paragraph (2C)(c) clarifies that Schedule 7 goods examinations can take place outside the perimeter of a port if in a “transit shed”.
234. New sub-paragraph (2C)(d) provides another means by which the power can be used in respect of goods beyond port boundaries. The designation power caters for the possibility that some goods which examining officers wish to examine are stored outside the perimeter of a port, and not in a transit shed or at the premises of an air or sea cargo agent (for example, in distribution depots). The power is only exercisable if the Secretary of State reasonably believes that it is necessary to designate that place in order for examining officers to be able to exercise their functions under paragraph 9. The obligation to publish a list of designations under new sub-paragraph (2E) ensures transparency as to which designated locations the Schedule 7 goods examination power may be exercised.
235. *Paragraph 1(4)* of Schedule 8 ensures there are powers for examining officers to enter premises operated by an air or sea cargo agent, transit sheds, and designated examination locations.
236. *Paragraph 2* of Schedule 8 ensures that the protection from interception afforded to postal communications in the Regulation of Investigatory Powers Act 2000 (“RIPA”) does not restrict the use of the paragraph 9 power in respect of postal packets. The section inserts a new subsection (3B) into section 3 of RIPA. This makes it clear that there is lawful authority for examinations of postal packets carried out under Schedule 7.
237. *Paragraph 3* of Schedule 8 has the effect of ensuring that in cases where examining officers examine postal items under paragraph 9 of Schedule 7, this does not infringe the “inviolability of mails” principle in section 104(3) of the Postal Services Act 2000 (the principle that mail-bags, packets in the post and their contents, which are not the property of the Crown, enjoy the same immunity from examination, seizure or detention, as if they were the property of the Crown).