

COUNTER-TERRORISM AND SECURITY ACT 2015

EXPLANATORY NOTES

PART 7: MISCELLANEOUS AND GENERAL

Summary and Background

238. Under section 36 of the Terrorism Act 2006 the Secretary of State is required to appoint a person to review the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. There are also requirements under section 20 of the Terrorism Prevention and Investigation Measures Act 2011 and section 31 of the Terrorist Asset-Freezing etc Act 2010 to appoint persons to review the operation of these Acts. A single person is currently appointed under these provisions and is known as the Independent Reviewer of Terrorism Legislation. His primary purpose is to ensure that UK counter-terrorism legislation, and the manner in which it is operated, is fair, effective and proportionate. This is an important part of CONTEST, the UK's counter-terrorism strategy, and the Reviewer's reports to Parliament inform debate and the public. During the passage of the Data Retention and Investigatory Powers Bill (which received Royal Assent on 17 July 2014), the Government committed to establish a board that would provide assurance to the public about the current counter-terrorism arrangements, including ensuring that legislation and policies have due regard for civil liberty and privacy concerns.

Commentary on Sections

Section 44: Reviews of operation of Part 1 etc

239. This section makes changes to the statutory remit of the Independent Reviewer of Terrorism Legislation to include: Part 1 of the Anti-terrorism, Crime and Security Act 2001, and Part 2 of that Act insofar as the power to make a freezing order is used in cases relating to terrorism; the Counter-Terrorism Act 2008; and Part 1 of this Act. This section also provides that the Independent Reviewer of Terrorism Legislation must notify the Secretary of State at the beginning of each calendar year of any matters within this section which he intends to review in the following 12 months and requires him to provide a report on the outcome of any such review to the Secretary of State as soon as reasonably practicable after its conclusion, who will in turn lay the report before Parliament.

Section 45: Reviews of operation of other terrorism legislation

240. This section makes equivalent changes to those contained in section 44 by providing that for matters falling within the Independent Reviewer's remit contained in other legislation (section 36 of the Terrorism Act 2006; section 31 of the Terrorist Asset-Freezing etc Act 2010; section 20 of the Terrorism Prevention and Investigation Measures Act 2011), the Independent Reviewer must notify the Secretary of State at the beginning of each calendar year of any matters which he intends to review in the following 12 months. The Independent Reviewer must provide a report on the outcome

of any such review to the Secretary of State as soon as reasonably practicable after its conclusion, who will in turn lay the report before Parliament. However, the Terrorism Act 2000, which remains the UK's principal piece of counter-terrorism legislation and contains a number of fundamental provisions, such as the definition of terrorism, continues to be subject to an annual reporting requirement.

Section 46: Privacy and Civil Liberties Board

241. **Section 46** provides the Secretary of State with a power to make regulations to create a body which will support the Independent Reviewer of Terrorism Legislation. The first set of regulations made under this power, and any subsequent set which amend, repeal or revoke primary legislation, are subject to affirmative resolution; other regulations are subject to the negative Parliamentary procedure. *Subsection (2)* provides that the body will be known as the "Privacy and Civil Liberties Board". Regulations made under this power may, amongst other things, provide for the details of the Board's functions, membership, staffing arrangements, its organisation and procedures (*subsection (3)*). Regulations brought forward under this section must provide for the Secretary of State to consider recommendations from the Independent Reviewer before appointing members of the Board, and must specify that the Board will operate under the direction and control of the Independent Reviewer, who will chair it (*subsection (4)*).

Section 47: Review of certain naturalisation decisions by Special Immigration Appeals Commission

242. This section provides for decisions to refuse to issue a certificate of naturalisation as a British Overseas Territories Citizen (BOTC), to be certified so that any challenge to that decision is by way of an appeal to the Special Immigration Appeals Commission (SIAC).
243. **Section 47** therefore amends section 2D of the Special Immigration Appeals Commission Act 1997 (jurisdiction: review of certain naturalisation and citizenship decisions), by adding at subsection (1)(a)(i) of section 2D of that Act, the relevant section of the British Nationality Act 1981 (BNA 1981) relating to applications to naturalise as a BOTC, to the existing list of citizenship decisions that may be certified.
244. The Justice & Security Act 2013 (JSA 2013) introduced the ability for the Secretary of State to certify decisions in certain types of application for British citizenship, so that any challenge to a decision to refuse a certificate of naturalisation or to refuse to grant an application to register as a British citizen, may be heard by SIAC. The effect of such certification is to confirm that the Secretary of State took the decision either wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be publicly disclosed on the grounds of national security, in the interests of the relationship between the United Kingdom and another country, or because it is otherwise not in the public interest to disclose the material.
245. The JSA 2013 created the ability for an applicant to whom such a decision relates, to apply to SIAC to have the decision set aside, with SIAC to apply "the principles which would be applied in judicial review proceedings", when determining whether the decision should be set aside. The Act also gave SIAC the ability in such proceedings, to make the same order or relief provisions as may be made or given in judicial review proceedings.
246. The JSA 2013 introduced this certification power with regards to applications to naturalise as a British citizen under section 6 of the BNA 1981 and with regards to applications to register as a British citizen of the kind mentioned in section 41A of that Act (which includes applications to register an adult or young person as a British citizen or as a BOTC), but it did not make similar provision for applications to naturalise as a BOTC.

247. **Section 47** seeks to address this gap by adding decisions with regard to applications to naturalise as a BOTC under section 18 of the BNA 1981, to the existing list of citizenship application types that may be certified by the Secretary of State.

Section 48: Power to make consequential provision

248. **Section 48** enables the Secretary of State, by regulations, to make provision consequential on the Act including consequential amendments to other enactments. Any such regulations that amend, repeal or revoke anything in primary legislation would be subject to the affirmative resolution procedure. Otherwise, the negative resolution procedure applies. The Secretary of State is required to consult the relevant devolved administration before making regulations under this section if any provision in those regulations would fall within the legislative competence of the Scottish Parliament, National Assembly for Wales or the Northern Ireland Assembly, if included in an Act of that Parliament or those Assemblies.