

COUNTER-TERRORISM AND SECURITY ACT 2015

EXPLANATORY NOTES

PART 5: RISK OF BEING DRAWN INTO TERRORISM ETC

Commentary on Sections

Chapter 1: Preventing people being drawn into terrorism

Section 26: General duty on specified authorities

180. *Subsection (1)* provides that a specified authority (listed in Schedule 6 to this Act) must, when exercising its functions, have due regard to the need to prevent people from being drawn into terrorism (the “Prevent” duty).
181. *Subsection (1)* does not apply to the exercise of the functions listed in *subsection (4)*.
182. *Subsection (3)* caters for the possibility that specified authorities have a range of functions, or act in a variety of capacities, and that it is appropriate that the exercise of only some of those functions is subject to the duty, or that a specified authority is only subject to the duty when acting in a particular capacity. For example, a company might run an independent school and also a separate business. The effect of *subsection (3)* is that the company would be subject to the duty only in its running of the school.
183. *Subsection (4)* provides a number of functions in respect of which the Prevent duty does not apply and *subsection (5)* provides that the reference to a judicial function in *subsection (4)* includes a reference to a judicial function conferred on a person other than a court or tribunal. This is intended to ensure, for example, that where a specified authority is exercising a quasi-judicial function, it is not subject to the Prevent duty.

Section 27: Power to specify authorities

184. *Subsection (1)* allows the Secretary of State to amend the list of specified authorities in Schedule 6. The Secretary of State does this by making regulations. The regulations may also amend Chapter 1 so as to make consequential or supplemental provision (*subsection (3)*). *Subsection (4)* provides that a draft of these regulations must be approved by each House of Parliament. However, where an amendment to Schedule 6 is required only because a specified authority has ceased to exist, has changed its name or transferred its functions, the regulations will become law without prior Parliamentary approval (although they could be annulled by a resolution by either House of Parliament (*subsections (5) and (6)*)).
185. *Subsection (2)* states that the power to amend Schedule 6 cannot be exercised in order to extend the duty in section 26(1) to the functions and bodies listed in *paragraphs (a) to (j)*.

Section 28: Power to specify authorities: Welsh and Scottish authorities

186. This section provides that where the power in to make regulations which amend the list of specified authorities in section 27(1) is to be used to add Welsh and/or Scottish authorities, or amend or remove an entry that relates to such an authority, the Secretary of State must first consult Welsh and/or Scottish Ministers.

Section 29: Power to issue guidance

187. *Subsection (1)* provides that the Secretary of State may issue guidance to specified authorities about the exercise of the duty in section 26(1).
188. *Subsection (2)* provides that the specified authorities must have regard to the guidance in carrying out the duty in section 26(1).
189. *Subsection (3)* provides that the Secretary of State may issue separate guidance relating to separate matters and it may be issued to all specified authorities, particular specified authorities or to specified authorities of a particular type.
190. *Subsection (4)* provides that the Secretary of State must consult with Welsh or Scottish Ministers on the guidance before issuing it where it relates to the devolved Welsh or Scottish functions of a Welsh or Scottish authority. The Secretary of State must also consult with any other person he considers appropriate.
191. *Subsection (5)* provides that any guidance is to be brought into force by regulations which are subject to the affirmative resolution procedure.
192. *Subsection (6)* provides that the Secretary of State may revise the guidance.
193. *Subsection (7)* provides that the duty of specified authorities to have regard to the guidance, and the power of the Secretary of State to issue separate guidance in relation to different matters and to particular specified authorities, applies equally in respect of any revised guidance. *Subsection (7)* also provides that regulations which bring revisions of the guidance into force are subject to the affirmative procedure. *Subsection (8)* provides that the consultation obligations must be satisfied when the guidance is being revised, unless the Secretary of State considers that the revisions are insubstantial and do not merit consultation.
194. *Subsection (9)* provides that the Secretary of State must publish the current version of the guidance.

Section 30: Power to give directions: general

195. *Subsection (1)* gives the Secretary of State the power to issue directions to a specified authority to enforce the performance of the Prevent duty where the Secretary of State is satisfied that the specified authority has failed to discharge that duty.
196. *Subsection (2)* provides that the Secretary of State can apply to the courts to have a direction under *subsection (1)* enforced by a mandatory order.
197. The Secretary of State must consult the Welsh or Scottish Ministers before giving a direction under *subsection (1)* where the direction relates to the devolved Welsh or Scottish functions of a Welsh or Scottish authority (*subsections (3) and (4)*).

Section 31: Freedom of expression in universities etc

198. *Subsection (2)(a)* requires any specified authority which is the proprietor or governing body of a higher and further education institution referred to in *subsection (1)* to have particular regard to the duty to secure freedom of speech imposed by section 43(1) of the Education (No. 2) Act 1986 (if they are subject to that duty), when carrying out the Prevent duty. *Subsection (2)(b)* requires institutions to have particular regard to the importance of academic freedom as described in section 202(2)(a) of the

Education Reform Act 1988 (if they are “qualifying institutions” within the meaning of section 202(3) of the 1988 Act) when carrying out the Prevent duty. This section also places a duty on the Secretary of State to have particular regard to the freedom of speech duty and the importance of academic freedom when issuing guidance or when giving directions to these educational bodies.

Section 32: Monitoring of performance: further and higher education bodies

199. This section places a duty on relevant higher and further education bodies, as defined in *subsection (1)*, to provide information to a monitoring authority to allow the monitoring authority to assess the bodies’ compliance with the Prevent duty. The monitoring authority may be the Secretary of State or a body to which he or she delegates the monitoring function (*subsection (4)*). *Subsections (5) to (8)* provide mechanisms for making such delegations. If the person to whom the Secretary of State is to delegate monitoring functions is a person referred to in *subsection (5)*, the delegation can be made by way of notice. If it is to be any other person, the delegation must be made by way of regulations subject to the negative procedure.

Section 33: Power to give directions: section 32

200. This section provides for the Secretary of State to give directions to relevant higher and further education bodies where satisfied that they have failed to comply with the duty to provide information to the monitoring authority. The Secretary of State may, if necessary, seek a mandatory order from the court to enforce any such directions. The Secretary of State must consult the Welsh Ministers before giving directions in relation to institutions in Wales.

Section 34: Enforcement

201. This section provides that where a specified authority fails to carry out the Prevent duty this does not constitute a cause of action under private law. This section is designed to make it clear that the Prevent duty does not create any private law rights for individuals.

Section 35: Chapter 1: interpretation

202. This section defines certain terms used in Chapter 1 of Part 5.