

Explanatory Notes to Terrorism Act 2000

2000 Chapter 11

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*These notes refer to the Terrorism Act 2000,
which received Royal Assent on 20th July 2000*

Terrorism Act 2000

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Terrorism Act 2000, which received Royal Assent on 20 July 2000. They have been prepared by the Home Office and the Northern Ireland Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment none is given.

SUMMARY

3. The Act reforms and extends previous counter-terrorist legislation, and puts it largely on a permanent basis. The previous legislation concerned is:

- the Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4) ("the PTA");
- the Northern Ireland (Emergency Provisions) Act 1996 (c. 22) ("the EPA"); and
- sections 1 to 4 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 (c. 40).

4. The Act builds on the proposals in the Government's consultation document *Legislation against terrorism* (Cm 4178), published in December 1998. The consultation document in turn responded to Lord Lloyd of Berwick's *Inquiry into legislation against terrorism* (Cm 3420), published in October 1996.

5. Previous counter-terrorist legislation provided a range of measures designed to prevent terrorism and support the investigation of terrorist crime. These fall into three broad categories: a power for the Secretary of State to proscribe terrorist organisations, backed up by a series of offences connected with such organisations (membership, fundraising etc); other specific offences connected with terrorism (such as fund-raising for terrorist purposes, training in the use of firearms for terrorist purposes, etc); and a range of police powers (powers of investigation, arrest, stop and search, detention, etc).

6. The Act repeals the PTA and re-enacts those of its provisions which remain necessary, with a number of modifications. The previous counter-terrorist legislation was subject to annual renewal by Parliament. Under the Act this will in general no longer be the case. The main provisions in the Act are to be permanent. There will, however, continue to be an annual report to Parliament on the working of the Act; this is required under section 126.

7. The EPA would have repealed itself on 24 August 2000. The consultation document expressed the Government's hope that the special provision it makes for Northern Ireland might not be needed after that date, an objective to be kept under review in the light of

developments in the security situation. The Government takes the view that the time is not yet right to remove all of these provisions. Part VII of the Act therefore provides additional temporary measures for Northern Ireland only. These are subject to annual renewal and are time-limited to 5 years.

8. The previous counter-terrorist legislation was originally designed in response to terrorism connected with the affairs of Northern Ireland ("Irish terrorism"), and some of its provisions had subsequently been extended to certain categories of international terrorism. It did not apply to any other terrorism connected with UK affairs ("domestic terrorism"). Under the Act these restrictions have been lifted, so that counter-terrorist measures are to be applicable to all forms of terrorism: Irish, international, and domestic.

OVERVIEW

9. The Act's Parts and Schedules are as follows.

- Part I (Introductory) sets out the definition of terrorism for the purposes of the Act, repeals the PTA and, with Schedule 1, deals with the continuation of certain temporary provisions of the EPA until Part VII of the Act is brought into force.
- Part II (Proscribed organisations) provides a power for the Secretary of State to proscribe organisations and sets out the associated offences. Schedule 2 lists the organisations which are currently proscribed and Schedule 3 details the functions of the Proscribed Organisations Appeal Commission (POAC) which the Act sets up.
- Part III (Terrorist property) provides offences relating to fund-raising and other kinds of financial support for terrorism, together with power for a court to order forfeiture of any money or other property connected with the offences. Schedule 4 gives details of forfeiture procedures.
- Part IV (Terrorist investigations) provides the police with a power to set up cordons. Schedule 5 sets out further powers to investigate terrorism by searching premises and seeking explanation of items found; and Schedule 6 provides a power to investigate terrorist finance based on an existing Northern Ireland power to investigate proceeds of crime.
- Part V (Counter-terrorist powers) provides the police with powers to arrest and detain suspected terrorists, and broader powers to stop and search vehicles and pedestrians, and to impose parking restrictions. Schedule 7 provides examination powers at ports and borders; and Schedule 8 provides for the treatment of suspects who are detained and for judicial extension of the initial period of detention.
- Part VI (Miscellaneous) provides ancillary offences of
 - weapons training for terrorist purposes, including recruitment for such training,
 - directing a terrorist organisation,
 - possessing articles for terrorist purposes,
 - possessing information for terrorist purposes, and
 - incitement of overseas terrorism.

Part VI also includes provisions on extraterritorial jurisdiction and extradition which will enable the UK to ratify the UN Conventions for the Suppression of Terrorist Bombings and for the Suppression of the Financing of Terrorism.

- Part VII (Northern Ireland) provides for the system of non-jury trials in Northern Ireland for the offences listed in Schedule 9. Together with Schedules 10-13, this Part also provides additional police and Army powers for Northern Ireland, and regulates the private security industry in Northern Ireland.
- Part VIII (General) contains further technical provisions and includes a list of terms defined in the Act. Schedule 14 provides general powers for police, customs and immigration officers including powers for them to exchange information. Schedules 15 and 16 list consequential amendments and repeals.

COMMENTARY

PART I: INTRODUCTORY

Section 1: Terrorism: interpretation

10. Under the PTA, terrorism "means the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear" (section 20). The definition in the PTA is limited in that the powers and offences in that Act only apply to terrorism connected with the affairs of Northern Ireland ("Irish terrorism") or Irish and international terrorism. The Act, as suggested in the consultation document, adopts a wider definition, recognising that terrorism may have religious or ideological as well as political motivation, and covering actions which might not be violent in themselves but which can, in a modern society, have a devastating impact. These could include interfering with the supply of water or power where life, health or safety may be put at risk. *Subsection (2)(e)* covers the disrupting of key computer systems. *Subsection (3)* provides that where action involves firearms or explosives, it does not have to be designed to influence the government or to intimidate the public or a section of the public to be included in the definition. This is to ensure that, for instance, the assassination of key individuals is covered.

11. *Subsection (4)* provides for the definition to cover terrorism not only within the United Kingdom but throughout the world. This is implicit in the PTA definition but the Act makes it explicit.

Section 2: Temporary legislation

12. *Subsection (1)* repeals the PTA and EPA. *Subsection (2)*, together with Schedule 1, preserves certain provisions of the EPA, in some cases with amendment, until the date on which Part VII (Northern Ireland) of the Act is brought into force: see further notes on Schedule 1 below.

PART II: PROSCRIBED ORGANISATIONS

13. Part II is based on Part I of the PTA (which has effect in Great Britain only) and on sections 30-31 of the EPA (which have effect in Northern Ireland only). The proscription regime under the Act differs from those it replaces as follows:

- The PTA and EPA provide separate proscription regimes for Great Britain and Northern Ireland. Under the Act proscription will no longer be specific to Northern Ireland or Great Britain, but will apply throughout the whole of the UK.
- Under the PTA and EPA proscription is only applicable to organisations concerned in Irish terrorism. Under the Act it will also be possible to proscribe organisations concerned in international or domestic terrorism.
- Under the PTA and EPA an organisation or an affected individual wishing to challenge a proscription can only do so in the UK via judicial review (no proscribed organisation has ever done this). Under the Act, organisations and individuals will be able to apply to the Secretary of State for deproscription and, if their application is refused, to appeal to the Proscribed Organisations Appeal Commission ("POAC"; see below).

Section 3: Proscription

14. Schedule 2 lists all organisations proscribed under the PTA and the EPA at the time the Act received Royal Assent. Some organisations were at that point proscribed in Northern Ireland under the EPA but not in Great Britain under the PTA. Under the Act, any organisation deemed to merit proscription will be proscribed throughout the whole of the UK. The Government is considering which organisations involved in international terrorism might be added to the Schedule.

15. The power to proscribe and deproscribe in *subsection (3)*, including deproscription following a successful appeal, will be subject to the affirmative resolution procedure.

Sections 4-6: Deproscription: application and appeals

16. These sections set out the route by which an organisation which thinks it should not be proscribed, or an affected individual, may seek a remedy. The first step is to ask the Secretary of State to deproscribe; the Secretary of State will be obliged to consider such applications within a period of time specified in regulations to be made under *subsection (3)* of section 4. If the Secretary of State refuses to deproscribe, then the organisation or individual may appeal to POAC as set out in section 5 and Schedule 3.

17. The grounds on which POAC will allow an appeal are set out in *subsection (3)* of section 5. The reference to "the principles applicable on an application for judicial review" allows that once the Human Rights Act 1998 (c. 42) is fully in force, it will be possible for an appellant to raise points concerning those rights under the European Convention on Human Rights which are "Convention rights" under the 1998 Act.

18. *Subsections (4)-(5)* of section 5 deal with the consequences of an appeal to POAC being successful. Where POAC makes an order, this has the effect of requiring the

Secretary of State either to lay a draft deproscription order before Parliament or to make a deproscription order on the basis of the urgency procedure (see below).

19. Section 6 allows a further appeal from a decision of POAC on a question of law.

Sections 7-8: Appeal: effect on conviction

20. If an appeal to POAC is successful, and an order has been made deproscribing the organisation, anyone convicted of one of the offences listed in *subsection (1)(c)* in respect of the organisation, so long as the offence was committed after the date of the refusal to deproscribe, may, in England and Wales, appeal against his conviction to the Court of Appeal or Crown Court, and the Court will allow the appeal. *Subsection (8)* ensures that he can seek compensation for the conviction. Corresponding provision is made for Scotland and Northern Ireland.

Section 9: Human Rights Act 1998

21. Since it is intended that the Lord Chancellor will make rules under section 7(2) of the Human Rights Act so that proceedings under section 7(1)(a) of that Act may be brought before POAC, this section of the Act applies provisions in the Act relating to appeals to POAC to such proceedings under the Human Rights Act.

Section 10: Immunity

22. An individual who seeks deproscription by way of application or appeal, either on behalf of the proscribed organisation or as a person affected, might be discouraged from pursuing either course, or from instituting proceedings under section 7 of the Human Rights Act, by the risk of prosecution for certain offences, for example the offence of membership of a proscribed organisation. This section therefore ensures that evidence of anything done, and any document submitted for these proceedings, cannot be relied on in criminal proceedings for such an offence except as part of the defence case.

Sections 11-12: Membership and support

23. These offences are based on those in section 2 of the PTA and section 30 of the EPA, and have similar effect. The offence in section 12(1) is not confined to support by providing "money or other property", because that kind of support is dealt with in Part III of the Act. *Subsection (4)* of section 12 is intended to permit the arranging of genuinely benign meetings.

Section 13: Uniform

24. This section replicates the offence at section 3 of the PTA and section 31 of the EPA. The PTA version, which has effect in England and Wales and in Scotland, is summary only with a maximum custodial penalty of 6 months. The EPA version, which has effect in Northern Ireland is an either way offence with a maximum custodial penalty on

indictment of 1 year. In the Act, the offence is summary only, as in the PTA. Thus in consolidating the legislation the Act aligns the situation in Northern Ireland with that in Great Britain.

PART III: TERRORIST PROPERTY

25. This Part corresponds to Part III of the PTA ("Financial assistance for terrorism") and was discussed in Chapter 6 of the Government's consultation document under the heading "Terrorist finance". The name has been changed to "Terrorist property" to make it clear that in the Act - just as in the PTA - the Part III offences apply not only to money but also to other property. While Part III of the PTA applies only to Irish and certain kinds of international terrorism, Part III of the Act applies to all forms of terrorism.

26. In addition to replicating Part III of the PTA, Part III of the Act also introduces a new power for the police, customs officers and immigration officers to seize cash at borders and to seek forfeiture of the cash in civil proceedings. This is modelled on a power which already exists in Part III of the Drug Trafficking Act 1994 (c. 37).

Section 14: Terrorist property

27. This definition comes into play in the "money laundering" offence (section 18) and the power to seize and forfeit cash at borders (sections 25 and 28). *Subsection (1)* makes it clear that terrorist property can include both property to be used for terrorism and proceeds of acts of terrorism. *Subsection (2)(a)* makes explicit that the proceeds of an act of terrorism covers not only the money stolen in, say, a terrorist robbery, but also any money paid in connection with the commission of terrorist acts. *Subsection (2)(b)* makes explicit that any resources of a proscribed organisation are covered: not only the resources they use for bomb-making, arms purchase etc but also money they have set aside for non-violent purposes such as paying rent.

Sections 15-17: Fundraising, use, possession and funding arrangements

28. These sections correspond to sections 9 and 10 of the PTA. By virtue of section 1(5) of the Act the words "for the purposes of terrorism" can be taken to include "for the benefit of a proscribed organisation". As a result, the offences of fund-raising, and using and possessing money, and entering into funding arrangements for a proscribed organisation (section 10 of the PTA) are subsumed into these sections.

Section 18: Money laundering

29. This section corresponds to section 11 of the PTA and has the same effect. Although it is entitled "money laundering" and is most likely to be used for money, it also applies to "laundering" type arrangements in respect of other property.

Section 19: Disclosure of information: duty

30. This section is based on section 18A of the PTA and has the same effect. It requires banks and other businesses to report any suspicion they may have that someone is laundering terrorist money or committing any of the other terrorist property offences in sections 15-18. *Subsection (1)(b)* ensures the offence is focused on suspicions which arise at work. *Subsection (5)* preserves the exemption in respect of legal advisers' privileged material.

31. Suspicions arising in home life were covered by section 18 of the PTA which the Government has decided, following Lord Lloyd, not to replicate.

Sections 20-21: Disclosure of information: permission; co-operation with the police

32. These sections correspond to section 12 of the PTA and have the same effect. Section 20 ensures that businesses can disclose information to the police without fear of breaching legal restrictions. *Subsection (1)* of section 21 allows for the activities of informants who may have to be involved with terrorist property if they are not to be found out and protects others who may innocently become involved. *Subsection (2)* makes it possible for someone involved with such property to avoid prosecution by telling the police as soon as is reasonably practicable (*subsection (3)*) and discontinuing his involvement if asked to do so by the police (*subsection (4)*).

Sections 22-23: Penalties and forfeiture

33. Section 22 corresponds to section 13(1) of the PTA and has the same effect. Section 23 is based on section 13(2) of the PTA and has similar effect subject to one substantive modification. *Subsection (6)* allows for forfeiture of the proceeds of a terrorist property offence. This could arise in a case where an accountant prepared accounts on behalf of a proscribed organisation - thus facilitating the retention or control of the organisation's money - and was paid for doing so. The money he received in payment could not be forfeited under section 13(2) of the PTA because it was not intended or suspected for use in terrorism. It could not be confiscated under the Criminal Justice Act 1988 (c. 33) because that confiscation regime excludes terrorist property offences. *Subsection (6)* closes this loophole between the confiscation scheme in the 1988 Act and the counter-terrorist forfeiture scheme.

Sections 24-31: Seizure, detention and forfeiture of terrorist cash at borders

34. These sections are based on sections 42-48 of the Drug Trafficking Act 1994 (c. 37) which relate to drug trafficking money imported or exported in cash. The main difference (apart from applying the powers to terrorist rather than drug trafficking cash) is that the powers in the Drug Trafficking Act only apply to cash being taken across the UK's external borders, while those in the Act also apply to cash being taken from Northern Ireland to Great Britain and vice versa. As with drug trafficking, no criminal conviction is required.

Section 24: Interpretation

35. *Subsection (1)* allows the power to seize cash to be exercised by any of the agencies operating at borders: police, customs and immigration. This is to allow for the event that a customs or immigration officer is the first to find the cash. However, it is expected that for the most part the power will be exercised by the police. The definition of cash in *subsection (2)* is intended to cover the most readily realisable monetary instruments used by terrorists; the order-making power in *subsection (2)(e)* will enable the Secretary of State to add further monetary instruments as the need arises.

Section 25: Seizure and detention

36. Once cash has been seized, then under this section it can be detained for up to 48 hours. During that time the authorities must either seek continued detention or forfeiture. If neither of these occurs during the first 48 hours, the cash will be returned.

Sections 26-27: Continued detention of cash

37. A magistrate can allow continued detention for up to 3 months under *subsection (2)(b)* of section 26. A further application can be granted after the 3 months has expired, and so on, up to a maximum of two years (*subsection (4)*). In section 27, *subsection (1)* provides for any interest accruing on the cash, and *subsections (2)-(5)* for application to the court for a direction that the cash be released.

Sections 28-29: Forfeiture and appeal

38. This section provides for civil forfeiture proceedings in relation to the seized cash. Evidence that the cash is terrorist property is required to the civil standard (*subsection (2)* of section 28); proceedings for a criminal offence are not needed (*subsection (4)*) and the proceedings themselves are civil as opposed to criminal. Appeals must be lodged within 30 days, and the route of appeal is in England and Wales to the Crown Court; in Northern Ireland to the county court; and in Scotland to the Court of Session. A successful appeal will result in the cash being paid back, together with any accrued interest.

39. *Subsections (6)-(7)* provide for the situation where an organisation is deproscribed following a successful appeal to POAC, and a forfeiture order has been made in reliance (in whole or in part) on the fact that the organisation was proscribed. In such cases, the person whose cash has been forfeited may appeal at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force.

PART IV: TERRORIST INVESTIGATIONS

Section 32: Terrorist investigation

40. This definition applies to the power in sections 33-36 to use cordons, to the powers in Schedule 5 to obtain search warrants, production orders and explanation orders; and to the power in Schedule 6 to make financial information orders. There is also an offence in section 39 of "tipping off" in relation to a terrorist investigation.

Sections 33-36: Cordons

41. These sections make similar provision to that inserted into the PTA, at section 16C and Schedule 6A, by the Prevention of Terrorism (Additional Powers) Act 1996 (c. 7). They give the police the power for a limited period to designate and demarcate a specified area as a cordoned area for the purposes of a terrorist investigation - for instance in the wake of a bomb. They also make it an offence to breach a cordon.

Section 37: Powers

42. See notes on Schedule 5 below.

Section 38: Financial information

43. See notes on Schedule 6 below.

Section 39: Disclosure of information, &c.

44. This section corresponds to section 17(2)-(6) of the PTA and has similar effect. The offences it sets out, including that at *subsection (2)(a)* which is sometimes called "tipping off", are essential to the disclosure regime and have a powerful deterrent effect. The defence at section 39(5)(a) is listed in section 118(5) and therefore imposes an evidential burden only on the defendant.

PART V: COUNTER-TERRORIST POWERS

Sections 41-43: Arrest power and related search powers

45. These sections make similar provision to the arrest and detention provisions at sections 14 and 15 of the PTA. There is a special arrest power for use in terrorist cases because experience continues to show that it is necessary to make provision for circumstances where, at the point when the police believe an arrest should take place, there is not enough to charge an individual with a particular offence even though there is reasonable suspicion of involvement with terrorism. Sections 42 and 43 give the police powers to search people liable to arrest under section 41. *Subsection (9)* of section 41 and *subsection (5)* of section 43, respectively, give constables the power to make an arrest under section 41(1) of the Act in any Part of the United Kingdom, and to search people under section 43 (these subsections in other words confer "cross border" powers of arrest and search).

Sections 44-47: General powers to stop and search

46. These sections make similar provision to the following sections of the PTA: section 13A (inserted by the Criminal Justice and Public Order Act 1994 (c. 33)) and section 13B (inserted by the Prevention of Terrorism (Additional Powers) Act 1996 (c. 7)). They give the police powers to stop and search vehicles and their occupants, and pedestrians, for the

prevention of terrorism. As with the powers under the PTA, authorisations apply to a specific area and are for a maximum of 28 days (though that period may be renewed). The main difference is that vehicle stop and search authorisations, as well as pedestrian authorisations, will have to be confirmed or amended by a Secretary of State within 48 hours of their being made, or they will cease to have effect.

Sections 48-52: Parking

47. These sections make similar provision to that inserted by the Prevention of Terrorism (Additional Powers) Act 1996 (c. 7) as section 16D of the PTA. This gives the police the powers to restrict or prohibit parking for a limited period in a specified area for the prevention of terrorism and makes it an offence to park in or refuse to move from such an area.

Section 53: Port and border controls

48. This section brings into effect Schedule 7 on port and border controls, and by subsection (2) allows for the Secretary of State to repeal by order the provision at paragraph 16 of the Schedule, which enables him to bring in by order a requirement for passengers in the Common Travel Area to complete cards.

PART VI: MISCELLANEOUS

49. This Part deals, among other things, with the offences which were discussed in Chapter 12 of the Government's consultation paper under the heading "Ancillary offences".

Sections 54-55: Weapons training

50. These sections correspond to the offence at section 34 of the EPA. Whereas that offence applied only in Northern Ireland, the new version applies throughout the UK. It has also been extended to cover chemical, biological and nuclear weapons and materials as well as conventional firearms and explosives; and to cover recruitment for training (*subsection (3)*) as well as the training itself. *Subsection (5)* of section 54 provides a defence for persons who are acting for non-terrorist purposes, such as the armed forces. This defence is listed in section 118(5) and therefore imposes an evidential burden only on the defendant.

51. A further modification concerns the need for a recipient of the training. Under *subsection (1)* of section 54, by contrast with its predecessor in the EPA, no recipient is needed for the offence to be committed. This means that the offence could cover someone who makes weapons instruction for terrorist purposes generally available, for example via the Internet.

52. The definitions of chemical, biological and nuclear weapons and materials are based on other statutes.

* Under section 1 of the Chemical Weapons Act 1996 (c. 6), "chemical weapons" are toxic chemicals and their precursors; munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them; and equipment designed for use in connection with such munitions and devices.

* Section 1(1)(b) of the Biological Weapons Act 1974 (c. 6) applies to any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict.

* The meaning of "nuclear material" set out in the Schedule to the Nuclear Material (Offences) Act 1983 (c. 18), is "plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing". The Schedule also further defines "uranium enriched in the isotopes 235 or 233".