

## **SCRUTINY OF PRE-CHARGE DETENTION IN TERRORIST CASES**

1. This paper deals with the scrutiny of applications for a warrant of further detention between 14 days and 28 days. These are made by CPS Counter Terrorism Division (CTD) who thoroughly scrutinise any request to make such an application and firstly decide whether it is necessary or appropriate before ever commencing the process.
2. Only if they consider that it is necessary and appropriate, and that the necessary criteria (see below) is met, will an application be made: To date, since the change in time limits to a maximum 28 days, applications beyond 14 days have only been made in 3 cases: the alleged airline plot, arrests arising out of an investigation in Manchester and the current investigation in relation to the London and Glasgow bombs.
3. The legal detail of this procedure is set out at Annex A.
4. The reality of this procedure in a case where there are multiple defendants is that, whilst a CPS lawyer will be advising on whether there is sufficient evidence to charge, a different CPS lawyer is likely to be appointed to present the warrant of further detention application.
5. The High Court Judge will need to be persuaded that:
  - There are reasonable grounds to believe that the further detention is necessary to obtain relevant evidence, whether by questioning or otherwise or to preserve relevant evidence; and
  - The investigation in connection with which the person is detained is being conducted diligently and expeditiously.
6. This can be done with both open source material which is presented in the presence of the defence and sensitive material which is presented in the absence of the defence. The defendants, who are legally represented, are presented with a document setting out the state of the enquiry thus far and the future non-sensitive lines of enquiry, and can cross examine the senior investigating officer at length to test the strength of the application. (please note – this is not a legal entitlement, but is done to assist the court and speed up the process.) They are also allowed to make submissions arguing against the application.
7. Inevitably, to satisfy the Court that further detention is necessary (the first part of the test), the court must be informed in great detail of the lines of enquiry that are likely to bear results within the maximum period of detention available: speculative enquiries, or those that cannot achieve evidence within the next 7 or 14 days (as appropriate), are not enough.
8. What is required by the court is:
  - (a) Precise detail of the enquiries being made
  - (b) When they will be completed

- (c) What it is expected they will achieve and
- (d) what difference that will make to the charging decision.

These questions are particularly stark for any application beyond 21 days as results beyond the next few days are of little relevance.

9. To prove due diligence and expedition the court must be satisfied that the investigation as a whole has been conducted as quickly as is reasonably possible (and continues to be so). This will include current events i.e. ongoing enquiries and the review of the evidence with a view to charging decisions. This test does not respect normal working hours or conditions; so lawyers and police are expected to work long evenings, weekends even nights before they can request more time.
10. Due to the detail and extent of the evidence required to persuade a court that the two tests are satisfied, the work that goes into the preparation of such applications is extensive. The CPS lawyer works with police officers to obtain the necessary information, prepare the necessary documentation in advance of a hearing and then present the application. This is extremely onerous, particularly where there are multiple defendants as the application for each defendant must stand or fall on its own merits, and is a huge resource burden on both the police and the CPS.
11. This document deals with CPS applications for extensions between 14 – 28 days before a Judge, the police generally carry out applications between 0-14 days before a District Judge.
12. These, equally, are subject to scrutiny and opposition by the defence and, whilst they may be more easily justified, occurring as they do at an earlier stage in proceedings, it should be noted that these are not always successful. For example, in the recent high profile Operation Gamble in Birmingham, police applications for warrants to detain 9 men for a further 7 days to 14 days were refused for 2 of the suspects who were subsequently released, and were not granted for full 7 days for the remaining 7 suspects who were subsequently charged.

## **NOTE ON APPLICATIONS FOR EXTENSION OF DETENTION OF TERRORIST SUSPECTS IN ACCORDANCE WITH TERRORISM ACT 2000 and TERRORISM ACT 2006**

This document seeks to set out the law relevant to an application to extend the detention of persons further than a period of fourteen days from time of arrest. This is a new power introduced by **Section 25 (7) Terrorism Act 2006** which amends **Schedule 8 of Terrorism Act 2000** to allow , subject to judicial authority, a maximum period of detention of twenty eight ( 28) days rather than fourteen (14) days.

### **Who can make an application for a warrant of further detention?**

**Schedule 8, Paragraph 36(1) of the Terrorism Act 2000** sets out who can apply for a warrant of further detention. **Paragraph 36(1) Terrorism Act 2000** provided that warrants of further detention were to be made by a police officer of at least the rank of superintendent.. This has been amended by **Section 23(2) Terrorism Act 2006** to now include a Crown Prosecutor

### **To whom should such applications be made?**

If an application is to extend the period of detention more than fourteen (14) days after time of arrest, **Section 25(6)(1A) Terrorism Act 2000** amends **Paragraph 36 of the Terrorism Act 2000** and provides that such applications have to be made to a senior judge .

“Senior judge” is defined for this paragraph in **Section 25(10) Terrorism Act 2006** as a judge of the High Court or of the High Court of Judiciary.

### **For what period can detention be extended?**

Applications for further detention can only be made for a maximum period of 7 days at a time. If more than a period of 7 days is required, up to the maximum of 28 days, then further applications have to be made at the expiration of each period of 7 days.

**Section 25 (7) Terrorism Act 2006** amends **Paragraph 36(3) Terrorism Act 2000** and substitutes **Para 36(3)** and inserts **Paragraphs 36(3A) and 36(3AA)**. **Para 36(3 ) and (3A)** now provide that the period by which the specified period of further detention can be further extended is the period which

- Begins with the end of the period for which the period specified in the warrant was last extended.
- Ends with whichever is earlier of either the end of the period of seven days from that time or the end of the period of 28 days beginning with the time of the person’s arrest.

**Para 36 (3AA)** provides that the period need not be extended for the full period requested in Para 36(3) if the senior judge believes that it would be inappropriate for the period of extension to be as long as the period requested.

### **Grounds for extension**

The grounds for issuing a warrant of further detention are found in Schedule 8 Terrorism Act 2000 paragraph 32. These are as follows:

- There are reasonable grounds to believe that the further detention is necessary to obtain relevant evidence whether by questioning or otherwise or to preserve relevant evidence, and
- The investigation in connection with which the person is detained is being conducted diligently and expeditiously.

These have been amended by Terrorism Act 2006 to insert **Para 32 (1A)** as follows:

**(1A) The further detention of a person is necessary as mentioned in this sub-paragraph if it is necessary--**

- (a) to obtain relevant evidence whether by questioning him or otherwise;**
- (b) to preserve relevant evidence; or**
- (c) pending the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be or is being carried out with a view to obtaining relevant evidence.**

### **Procedure if there is to be an ex parte applications**

**Paragraph 34 of Schedule 8 of the Terrorism Act 2000** is the legal framework for the applicant seeking an order from the High Court Judge to withhold information from the detained person and representative which is to be relied upon during any such application. This has been amended by **S23(5) of Terrorism Act 2006** which substitutes the word “person” for “officer” in relation to who makes the application . This means that a Crown Prosecutor can now make such an application.

### **Place of detention if detention extended for more than 14 days** **PACE Code of Practice H Para 14.5**

After 14 days detainee must be transferred to prison as soon as reasonably practicable, unless

- (a) Detainee specifically requests to remain in police station and that request can be accommodated; or
- (b) There are reasonable grounds to believe that transferring detainee to prison would---
  - Significantly hinder a terrorism investigation
  - Delay the charging of the detainee or his release from custody, or
  - Otherwise prevent the investigation from being conducted diligently or expeditiously.

If any of grounds in (b) are relied upon these must be presented to judicial authority as part of the application for WFD.

