

Prevention of Terrorism Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as HL Bill 34 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Baroness Scotland of Asthal has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Prevention of Terrorism Bill are compatible with the Convention rights.

Prevention of Terrorism Bill

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Provide for the making against individuals involved in terrorism-related activity of orders imposing obligations on them for purposes connected with preventing or restricting their further involvement in such activity; to make provision about appeals and other proceedings relating to such orders; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Control orders

1 Power to make control orders

- (1) The Secretary of State may make an order (called a “control order”) against an individual if he—
- (a) has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity; and 5
 - (b) considers that it is necessary, for purposes connected with protecting members of the public from the risk of terrorism, to make an order imposing obligations on the individual.
- (2) A control order may impose any obligation on the individual against whom it is made that the Secretary of State considers necessary for purposes connected with preventing or restricting further involvement by that individual in terrorism-related activity (whether or not activity by reference to which the Secretary of State was satisfied for the purposes of subsection (1)(a)). 10
- (3) The obligations that may be imposed by a control order on the controlled person include, in particular— 15
- (a) a prohibition or restriction on his possession or use of specified articles or substances;
 - (b) a prohibition or restriction on his use of specified services or specified facilities, or on his carrying on specified activities; 20

- (c) a restriction in respect of his work or other occupation, or in respect of his business;
- (d) a restriction on his association or communications with specified persons or with other persons generally;
- (e) a restriction in respect of his place of residence or on the persons to whom he gives access to his place of residence; 5
- (f) a prohibition on his being at specified places or within a specified area at specified times or on specified days;
- (g) a prohibition or restriction on his movements to, from or within the United Kingdom, a specified part of the United Kingdom or a specified place or area within the United Kingdom; 10
- (h) a requirement on him to comply with such other prohibitions or restrictions on his movements as may be imposed, for a period not exceeding 24 hours, by directions given to him in the specified manner, by a specified person and for the purpose of securing compliance with other obligations imposed by or under the order; 15
- (i) a requirement on him to surrender his passport, or anything in his possession to which a prohibition or restriction imposed by the order relates, to a specified person for a period not exceeding the period for which the order remains in force; 20
- (j) a requirement on him to give access to specified persons to his place of residence or to other premises to which he has power to grant access;
- (k) a requirement on him to allow specified persons to search that place or any such premises for the purpose of ascertaining whether obligations imposed by or under the order have been, are being or are about to be contravened; 25
- (l) a requirement on him to allow specified persons, either for that purpose or for the purpose of securing that the order is complied with, to remove anything found in that place or on any such premises and to subject it to tests or to retain it for a period not exceeding the period for which the order remains in force; 30
- (m) a requirement on him to co-operate with specified arrangements for enabling his movements, communications or other activities to be monitored by electronic or other means;
- (n) a requirement on him to comply with a demand made in the specified manner to provide information to a specified person in accordance with the demand; 35
- (o) a requirement on him to report to a specified person at specified times and places.
- (4) Every power by or under a control order to prohibit or restrict the controlled person's movements – 40
- (a) includes, in particular, power to impose a requirement on him to remain at or within a particular place or area (whether for a particular period or at particular times or generally); and
- (b) is subject (where they are applicable) to the provisions of section 2. 45
- (5) The reference in subsection (3)(m) to co-operating with specified arrangements for monitoring includes a reference to each of the following –
- (a) submitting to procedures required by the arrangements;
- (b) wearing or otherwise using apparatus approved by or in accordance with the arrangements; 50
- (c) maintaining such apparatus in the specified manner;

- (d) complying with directions given by persons carrying out functions for the purposes of those arrangements.
- (6) The information that the controlled person may be required to provide under a control order includes, in particular, advance information about his proposed movements or other activities. 5
- (7) A control order may provide for a prohibition, restriction or requirement imposed by or under the order to apply only where a specified person has not given his consent or approval to what would otherwise contravene the prohibition, restriction or requirement.
- (8) For the purposes of this Act involvement in terrorism-related activity is any one or more of the following— 10
- (a) the commission, preparation or instigation of acts of terrorism;
 - (b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
 - (c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so; 15
 - (d) conduct which gives support or assistance to individuals who are known or believed to be involved in terrorism-related activity;
- and for the purposes of this subsection it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally. 20

2 Derogations from the right to liberty

- (1) The Secretary of State may make a control order imposing an obligation that is incompatible with the controlled person's right to liberty under Article 5 of the Human Rights Convention if, but only if— 25
- (a) he is satisfied, on the balance of probabilities, that that person is an individual who is or has been involved in terrorism-related activity;
 - (b) he considers that the imposition of the obligation is necessary for purposes connected with protecting members of the public from risks arising out of, or associated with, a particular public emergency; 30
 - (c) there is for the time being a designated derogation in respect of that emergency from the whole or a part of that Article; and
 - (d) the obligation is of a description of obligations which, for the purposes of that derogation, is set out in the designation order.
- (2) Where the Secretary of State makes a control order imposing a derogating obligation— 35
- (a) he must immediately refer the order to the court and notify the controlled person that he has done so; and
 - (b) the court must consider whether the matters relied on by the Secretary of State to justify the making of the order were capable (if not disproved) of constituting reasonable grounds for him to make the order he did. 40
- (3) The court's consideration on a reference under subsection (2)(a) must begin no more than 7 days after the day on which the control order in question was made. 45
- (4) On a reference under subsection (2)(a), the court—

- (a) if not satisfied that the matters relied on by the Secretary of State were capable of constituting reasonable grounds for him to make a control order against the controlled person, must quash the order;
- (b) if satisfied that they were capable of constituting reasonable grounds for the making of a control order against that person but not for the making of one imposing a derogating obligation, must quash the derogating obligation imposed by the order; and 5
- (c) in any other case, must give directions for the carrying out of a hearing by the court relating to the order.
- (5) On a hearing by the court under subsection (4)(c), the court must conduct its own hearing of each of the matters that fell to be determined by the Secretary of State – 10
- (a) in making his decision to make the order; and
- (b) in making his decisions to impose the obligations imposed by the order; and the court must make its own determination on each of those matters. 15
- (6) The powers of the court on making the determinations under subsection (5) are confined to –
- (a) power to confirm the order as made;
- (b) power to quash the order;
- (c) power to quash one or more obligations imposed by the order; 20
- (d) power to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes.
- (7) If requested to do so by the controlled person, the court must discontinue –
- (a) a reference under subsection (2)(a); or
- (b) a hearing under subsection (4)(c). 25
- (8) In this Act –
- “derogating obligation” means an obligation of a description of obligations which, for the purposes of the designation of a designated derogation, is set out in the designation order; and
- “designated derogation” has the same meaning as in the Human Rights Act 1998 (c. 42) (see section 14(1) of that Act). 30
- (9) In this section “designation order”, in relation to a designated derogation, means the order under section 14(1) of the Human Rights Act 1998 by which the derogation is designated.
- 3 Duration and renewal of non-derogating control orders** 35
- (1) A non-derogating control order –
- (a) has effect for a period of 12 months beginning with the day on which it is made; but
- (b) may be renewed on one or more occasions in accordance with this section. 40
- (2) A non-derogating control order must specify when the period for which it is to have effect will end.
- (3) The Secretary of State may renew a non-derogating control order (with or without modifications) for a period of 12 months if he –

- (a) considers that it is necessary, for purposes connected with protecting members of the public from the risk of terrorism, for an order imposing obligations on the controlled person to continue in force; and
 - (b) considers that the obligations to be imposed by the renewed order are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity. 5
- (4) Where the Secretary of State renews a non-derogating control order, the 12 month period of the renewal begins to run from whichever is the earlier of –
- (a) the time when the order would otherwise have ceased to have effect; or
 - (b) the beginning of the seventh day after the date of renewal. 10
- (5) The instrument renewing a non-derogating control order must specify when the period for which it is renewed will end.

4 Duration of derogating control orders

- (1) A derogating control order –
- (a) has effect (subject to subsection (3)) for a period of 6 months beginning with the day on which it is made; 15
 - (b) must specify when that period will end; and
 - (c) may not be renewed.
- (2) Subsection (1)(c) does not prevent the Secretary of State, whenever a derogating control order ceases to have effect – 20
- (a) from exercising any power of his to make a new control order to the same or similar effect for a further 6 month period; or
 - (b) from relying, in whole or in part, on the same matters for the purpose of making that new order.
- (3) A derogating control order has effect at a time only if – 25
- (a) the relevant derogation remains in force at that time; and
 - (b) that time is not more than 12 months after – 30
 - (i) the making of the order under section 14(1) of the Human Rights Act 1998 (c. 42) designating that derogation; or
 - (ii) the making by the Secretary of State of an order declaring that it continues to be necessary for him to have power to impose derogating obligations by reference to that derogation.
- (4) The power of the Secretary of State to make an order containing a declaration for the purposes of subsection (3)(b)(ii) is exercisable by statutory instrument.
- (5) No order may be made by the Secretary of State containing such a declaration unless a draft of it has been laid before Parliament and approved by a resolution of each House. 35
- (6) Subsection (5) does not apply to an order that contains a statement by the Secretary of State that the order needs, by reason of urgency, to be made without the approval required by that subsection. 40
- (7) An order under this section that contains such a statement –
- (a) must be laid before Parliament after being made; and
 - (b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which the order was made, ceases to have effect at the end of that period. 45

- (8) Where an order ceases to have effect in accordance with subsection (7), that does not—
- (a) affect anything previously done in reliance on the order; or
 - (b) prevent the Secretary of State from exercising any power of his to make a new order for the purposes of subsection (3)(b)(ii) to the same or similar effect. 5
- (9) In this section—
- “40 days” means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946 (c. 36);
 - “the relevant derogation”, in relation to a derogating control order, means the designated derogation by reference to which the derogating obligations imposed by that order were imposed. 10

5 Modification, notification and proof of orders etc.

- (1) If while a control order is in force the controlled person considers that there has been a change of circumstances affecting the order, he may make an application to the Secretary of State for—
- (a) the revocation of the order; or
 - (b) the modification of an obligation imposed by the order;
- and it shall be the duty of the Secretary of State to consider the application. 15
- (2) The Secretary of State may, at any time (whether or not in response to an application by the controlled person)—
- (a) revoke a control order;
 - (b) relax or remove an obligation imposed by such an order;
 - (c) with the consent of the controlled person, modify the obligations imposed by such an order; or 25
 - (d) make to the obligations imposed by such an order any modification which he considers necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity.
- (3) The Secretary of State may not, by virtue of subsection (2)(d), make any modification the effect of which is that a non-derogating control order becomes an order imposing a derogating obligation; but this does not prevent the Secretary of State—
- (a) from exercising any power of his to make a new control order imposing such an obligation on the same individual; or 35
 - (b) from relying, in whole or in part, on the same matters for the purpose of making that new order.
- (4) Where a revocation or modification of a control order is not to take effect immediately, the instrument of revocation or modification must specify the time from which it is to take effect. 40
- (5) The controlled person is bound by—
- (a) a control order,
 - (b) the renewal of a control order, or
 - (c) a modification by virtue of subsection (2)(d),
- only if a notice setting out the terms of the order, renewal or modification has been delivered to him in person. 45

- (6) For the purpose of delivering a notice under subsection (5) to the controlled person a constable or a person authorised for the purpose by the Secretary of State may (if necessary by force) –
- (a) enter any premises where he has reasonable grounds for believing that person to be; and 5
 - (b) search those premises for him.
- (7) Where the Secretary of State revokes a control order or modifies it by virtue of subsection (2)(b) or (c), he must give notice of the revocation or modification to the controlled person.
- (8) A control order, or the renewal, revocation or modification of such an order, may be proved by the production of a document purporting to be certified by the Secretary of State as a true copy of – 10
- (a) the order; or
 - (b) the instrument of renewal, revocation or modification;
- but this does not prevent the proof of a control order, or of the renewal, revocation or modification of such an order, in other ways. 15

6 Offences

- (1) A person who, without reasonable excuse, contravenes an obligation imposed on him by a control order is guilty of an offence.
- (2) A person is guilty of an offence if – 20
- (a) a control order by which he is bound at a time when he leaves the United Kingdom requires him, whenever he enters the United Kingdom, to report to a specified person that he is or has been the subject of such an order;
 - (b) he re-enters the United Kingdom after the order has ceased to have effect; 25
 - (c) the occasion on which he re-enters the United Kingdom is the first occasion on which he does so after leaving while the order was in force; and
 - (d) on that occasion he fails, without reasonable excuse, to report to the specified person in the manner that was required by the order. 30
- (3) A person is guilty of an offence if he intentionally obstructs the exercise by any person of a power conferred by section 5(6).
- (4) A person guilty of an offence under subsection (1) or (2) shall be liable – 35
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both;
 - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
 - (c) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both. 40
- (5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (4)(b) to 12 months is to be read as a reference to 6 months. 45

- (6) Where a person is convicted by or before any court of an offence under subsection (1) or (2), it is not to be open to the court, in respect of that offence –
- (a) to make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conditional discharge);
 - (b) to make an order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (probation orders); or
 - (c) to make an order under Article 4(1)(b) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conditional discharge in Northern Ireland).
- (7) A person guilty of an offence under subsection (3) shall be liable –
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.
- (8) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (7)(a) to 51 weeks is to be read as a reference to 6 months.
- (9) In Schedule 1A to the Police and Criminal Evidence Act 1984 (c. 60) (arrestable offences), at the end insert –
- “Prevention of Terrorism Act 2005*
- 27A An offence under section 6(3) of the Prevention of Terrorism Act 2005.”
- (10) In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (offences for which an arrest may be made without a warrant in Northern Ireland), at the end insert –
- “(o) An offence under section 6(3) of the Prevention of Terrorism Act 2005.”
- Challenging and appealing against control orders*
- 7 Appeals relating to non-derogating control orders**
- (1) Where –
- (a) a non-derogating control order has been made or renewed, or
 - (b) an obligation imposed by such an order has been modified without the consent of the controlled person,
- the controlled person may appeal to the court against the making, renewal or modification.
- (2) In the case of an appeal against a renewal with modifications, the appeal may include an appeal against some or all of the modifications.
- (3) Where an application is made by the controlled person to the Secretary of State for –
- (a) the revocation of a non-derogating control order, or
 - (b) the modification of an obligation imposed by such an order,

that person may appeal to the court against any decision by the Secretary of State on the application.

- (4) The function of the court on an appeal against the making of a non-derogating control order is to determine whether any of the following decisions of the Secretary of State was flawed — 5
- (a) his decision that the requirements of section 1(1)(a) and (b) were satisfied for the making of the order;
 - (b) his decisions on the imposition of each of the obligations imposed by the order.
- (5) The function of the court on an appeal against the renewal of a non-derogating control order, or on an appeal against a decision not to revoke such an order, is to determine whether either or both of the following decisions of the Secretary of State was flawed — 10
- (a) his decision that it is necessary, for purposes connected with protecting members of the public from the risk of terrorism, for an order imposing obligations on the controlled person to continue in force; 15
 - (b) his decision that the obligations to be imposed by the renewed order, or (as the case may be) the obligations imposed by the order to which the application for revocation relates, are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity. 20
- (6) The function of the court on an appeal against a modification of an obligation imposed by a non-derogating control order (whether on a renewal or otherwise), or on an appeal against a decision not to modify such an obligation, is to determine whether the following decision of the Secretary of State was flawed — 25
- (a) in the case of an appeal against a modification, his decision that the modification is necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity; and 30
 - (b) in the case of an appeal against a decision on an application for the modification of an obligation, his decision that the obligation continues to be necessary for that purpose.
- (7) In determining the matters mentioned in subsections (4) to (6) the court must apply the principles applicable on an application for judicial review. 35
- (8) If the court determines on an appeal under this section that a decision of the Secretary of State was flawed, its only powers are —
- (a) power to quash the order or its renewal;
 - (b) power to quash one or more obligations imposed by the order; and
 - (c) power to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes. 40
- (9) In every other case, the court must dismiss the appeal.

8 Appeals relating to derogating control orders

- (1) Where an obligation imposed by a derogating control order has been modified without the consent of the controlled person, that person may appeal to the court against the modification. 45

- (2) Where an application is made by the controlled person to the Secretary of State for –
- (a) the revocation of a derogating control order, or
 - (b) the modification of an obligation imposed by such an order,
- that person may appeal to the court against any decision by the Secretary of State on the application. 5
- (3) On an appeal under this section, the court must conduct its own hearing of each of the matters that fell to be determined by the Secretary of State in making his decision to modify or (as the case may be) his decision on the application; and the court must make its own determination on each of those matters. 10
- (4) The powers of the court on an appeal under this section are confined to –
- (a) power to confirm the Secretary of State’s decision;
 - (b) power to quash the order;
 - (c) power to quash one or more obligations imposed by the order;
 - (d) power to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes. 15

9 Jurisdiction and appeals in relation to control order decisions etc.

- (1) Control order decisions and derogation matters are not to be questioned in any legal proceedings other than – 20
- (a) proceedings in the court; or
 - (b) proceedings on appeal from such proceedings.
- (2) The court is the appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 (c. 42) in relation to proceedings all or any part of which call a control order decision or derogation matter into question. 25
- (3) No appeal shall lie from any determination of the court in control order proceedings, except on a question of law.
- (4) No appeal by any person other than the Secretary of State shall lie from any determination on a reference under section 2(2)(a).
- (5) The Schedule to this Act (which makes provision relating to and for the purposes of control order proceedings and proceedings on appeal from such proceedings) has effect. 30
- (6) In this Act “control order proceedings” means –
- (a) proceedings on a reference under section 2(2)(a);
 - (b) proceedings on a hearing under section 2(4)(c);
 - (c) proceedings on an appeal under section 7 or 8;
 - (d) proceedings in the court by virtue of subsection (2);
 - (e) any other proceedings in the court for questioning a control order decision or derogation matter;
 - (f) proceedings on an application made by virtue of rules of court under paragraph 4(5) of the Schedule to this Act (application for order requiring anonymity for the controlled person). 35
- (7) In this section “control order decision” means – 40

- (a) a decision made by the Secretary of State in exercise of a power conferred by any of sections 1 to 5 of this Act or for the purposes of or in connection with the exercise of any such power;
 - (b) a decision by any other person to give a direction, consent or approval, or to issue a demand, for the purposes of any obligation imposed by a control order; or 5
 - (c) a decision by any person that is made for the purposes of or in connection with the exercise of his power to give such a direction, consent or approval or to issue such a demand.
- (8) In this section “derogation matter” means – 10
- (a) a derogation by the United Kingdom from the Human Rights Convention which relates to infringement of a person’s right to liberty under Article 5 in consequence of obligations imposed on him by a control order; or
 - (b) the designation of such a derogation under section 14(1) of the Human Rights Act 1998 (c. 42). 15

10 Effect of court’s decisions on convictions

- (1) This section applies where –
- (a) a control order, a renewal of a control order or an obligation imposed by a control order is quashed by the court in control order proceedings, or on an appeal from a determination in such proceedings; and 20
 - (b) before it was quashed a person had been convicted by virtue of section 6(1) or (2) of an offence of which he could not have been convicted had the order, renewal or (as the case may be) obligation been quashed before the proceedings for the offence were brought. 25
- (2) The person convicted may appeal against the conviction –
- (a) in the case of a conviction on indictment in England and Wales or Northern Ireland, to the Court of Appeal;
 - (b) in the case of a conviction on indictment or summary conviction in Scotland, to the High Court of Justiciary; 30
 - (c) in the case of a summary conviction in England and Wales, to the Crown Court; and
 - (d) in the case of a summary conviction in Northern Ireland, to the county court.
- (3) On an appeal under this section to any court, that court must allow the appeal and quash the conviction. 35
- (4) An appeal under this section to the Court of Appeal against a conviction on indictment –
- (a) may be brought irrespective of whether the appellant has previously appealed against his conviction; 40
 - (b) may not be brought more than 28 days after the date of the quashing of the order, renewal or obligation; and
 - (c) is to be treated as an appeal under section 1 of the Criminal Appeal Act 1968 (c. 19) or, in Northern Ireland, under section 1 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47), but does not require leave in either case. 45

- (5) An appeal under this section to the High Court of Justiciary against a conviction on indictment—
- (a) may be brought irrespective of whether the appellant has previously appealed against his conviction;
 - (b) may not be brought more than two weeks after the date of the quashing of the order, renewal or obligation; and 5
 - (c) is to be treated as an appeal under section 106 of the Criminal Procedure (Scotland) Act 1995 (c. 46), but does not require leave.
- (6) An appeal under this section to the High Court of Justiciary against a summary conviction — 10
- (a) may be brought irrespective of whether the appellant pleaded guilty;
 - (b) may be brought irrespective of whether the appellant has previously appealed against his conviction;
 - (c) may not be brought more than two weeks after the date of the quashing of the order, renewal or obligation; 15
 - (d) is to be by note of appeal, which shall state the ground of appeal;
 - (e) does not require leave under any provision of Part 10 of the Criminal Procedure (Scotland) Act 1995; and
 - (f) must be in accordance with such procedure as the High Court of Justiciary may, by Act of Adjournal, determine. 20
- (7) An appeal under this section to the Crown Court or to the county court in Northern Ireland against a summary conviction—
- (a) may be brought irrespective of whether the appellant pleaded guilty;
 - (b) may be brought irrespective of whether he has previously appealed against his conviction or made an application in respect of the conviction under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (case stated); 25
 - (c) may not be brought more than 21 days after the date of the quashing of the order, renewal or obligation; and 30
 - (d) is to be treated as an appeal under section 108(1)(b) of that Act or, in Northern Ireland, under Article 140(1)(b) of that Order.
- (8) In section 133(5) of the Criminal Justice Act 1988 (c. 33) (compensation for miscarriages of justice), at the end of paragraph (c) insert “or
- (d) on an appeal under section 10 of the Prevention of Terrorism Act 2005.” 35

Supplemental

11 Reporting and review

- (1) As soon as reasonably practicable after the end of every relevant 3 month period, the Secretary of State must— 40
- (a) prepare a report about his exercise of the control order powers during that period; and
 - (b) lay a copy of that report before Parliament.
- (2) The Secretary of State must also appoint a person to review the operation of sections 1 to 6. 45

- (3) As soon as reasonably practicable after the end of every relevant 12 month period the person so appointed must carry out a review of the operation of those sections during that period.
- (4) The person who conducts a review under this section must send the Secretary of State a report on its outcome as soon as reasonably practicable after completing the review. 5
- (5) On receiving a report under subsection (4), the Secretary of State must lay a copy of it before Parliament.
- (6) The Secretary of State may pay the expenses of a person appointed to carry out a review and may also pay him such allowances as the Secretary of State determines. 10
- (7) In this section –
- “control order powers” means the powers of the Secretary of State under this Act to make, renew, modify and revoke control orders;
- “relevant 3 month period” means – 15
- (a) the period of 3 months beginning with the passing of this Act;
- (b) a 3 month period which begins with the end of a previous relevant 3 month period;
- “relevant 12 month period” means – 20
- (a) the period of 12 months beginning with the passing of this Act;
- (b) a 12 month period which begins with the end of a previous relevant 12 month period.

12 General interpretation

- (1) In this Act –
- “act” and “conduct” include omissions and statements; 25
- “act of terrorism” includes anything constituting an action taken for the purposes of terrorism, within the meaning of the Terrorism Act 2000 (c. 11) (see section 1(5) of that Act);
- “apparatus” includes any equipment, machinery or device and any wire or cable, together with any software used with it; 30
- “article” and “information” include documents and other records, and software;
- “contravene” includes fail to comply, and cognate expressions are to be construed accordingly;
- “control order proceedings” has the meaning given by section 9(6); 35
- “the controlled person”, in relation to a control order, means the individual on whom the order imposes obligations;
- “the court” –
- (a) in relation to proceedings relating to a control order in the case of which the controlled person is a person whose principal place of residence is in Scotland, means the Outer House of the Court of Session; 40
- (b) in relation to proceedings relating to a control order in the case of which the controlled person is a person whose principal place of residence is in Northern Ireland, means the High Court in Northern Ireland; and 45
- (c) in any other case, means the High Court in England and Wales;

- “derogating control order” means a control order imposing a derogating obligation;
- “derogating obligation” has the meaning given by section 2(8);
- “designated derogation” has the meaning given by section 2(8);
- “the Human Rights Convention” means the Convention within the meaning of the Human Rights Act 1998 (c. 42) (see section 21(1) of that Act);
- “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;
- “non-derogating control order” means a control order that does not for the time being impose a derogating obligation;
- “passport” means –
- (a) a United Kingdom passport (within the meaning of the Immigration Act 1971 (c. 77));
 - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation;
 - (c) a document that can be used (in some or all circumstances) instead of a passport;
- “premises” includes any vehicle, vessel, aircraft or hovercraft;
- “the public” means the public in the whole or a part of the United Kingdom or the public in another country or territory, or any section of the public;
- “specified”, in relation to a control order, means specified in that order or falling within a description so specified;
- “terrorism” has the same meaning as in the Terrorism Act 2000 (c. 11) (see section 1(1) to (4) of that Act);
- “terrorism-related activity” and, in relation to such activity, “involvement” are to be construed in accordance with section 1(8).
- (2) A power under this Act to quash a control order, the renewal of such an order or an obligation imposed by such an order includes power –
 - (a) in England and Wales or Northern Ireland, to stay the quashing of the order, renewal or obligation pending an appeal, or further appeal, against the decision to quash; and
 - (b) in Scotland, to determine that the quashing is of no effect pending such an appeal or further appeal.
 - (3) For the purposes of this Act a failure by the Secretary of State to consider an application by the controlled person for –
 - (a) the revocation of a control order, or
 - (b) the modification of an obligation imposed by such an order,
 is to be treated as a decision by the Secretary of State not to revoke or (as the case may be) not to modify the order.

13 Other supplemental provisions

- (1) This Act may be cited as the Prevention of Terrorism Act 2005.
- (2) The following provisions are repealed –
 - (a) sections 21 to 32 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (suspected international terrorists);

-
- (b) in section 1(4) of the Special Immigration Appeals Commission Act 1997 (c. 68), paragraph (b) (which refers to section 30 of the 2001 Act) and the word “or” immediately preceding it;
- (c) section 62(15) and (16) of the Nationality, Immigration and Asylum Act 2002 (c. 41) and paragraph 30 of Schedule 7 to that Act (which amended sections 23, 24 and 27 of the 2001 Act); and 5
- (d) section 32 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (which amended sections 24 and 27 of the 2001 Act).
- (3) Subsection (2) comes into force on 14th March 2005. 10
- (4) The repeals made by this Act do not prevent or otherwise affect—
- (a) the continuation of any appeal to the Special Immigration Appeals Commission under section 25(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) that has been brought but not concluded before the commencement of those repeals; 15
- (b) the bringing or continuation of a further appeal relating to a decision of that Commission on such an appeal or on any other appeal brought under section 25(1) of that Act before the commencement of those repeals; or
- (c) any proceedings resulting from a decision on a further appeal from such a decision; 20
- but no other proceedings before that Commission under Part 4 of that Act, nor any appeal or further appeal relating to any such other proceedings, may be brought or continued at any time after the commencement of the repeals.
- (5) The Secretary of State may enter into such contracts and other arrangements with other persons as he considers appropriate for securing their assistance in connection with any monitoring, by electronic or other means, that he considers needs to be carried out in connection with obligations that have been or may be imposed by or under control orders. 25
- (6) There shall be paid out of money provided by Parliament— 30
- (a) any expenditure incurred by the Secretary of State by virtue of this Act; and
- (b) any increase attributable to this Act in the sums payable out of such money under any other Act.
- (7) This Act extends to Northern Ireland. 35
- (8) Her Majesty may by Order in Council direct that this Act shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

SCHEDULE

Section 9

CONTROL ORDER PROCEEDINGS ETC.

Introductory

- 1 (1) In this Schedule “the relevant powers” means the powers to make rules of court for regulating the practice and procedure to be followed in proceedings in the court, the Court of Appeal or the Inner House of the Court of Session, so far as those powers are exercisable in relation to – 5
- (a) control order proceedings; or
- (b) relevant appeal proceedings.
- (2) In this Schedule “relevant appeal proceedings” means proceedings in the Court of Appeal or Inner House of the Court of Session on an appeal relating to any control order proceedings. 10

General duty applying to exercise of the relevant powers

- 2 A person exercising the relevant powers must have regard, in particular, to – 15
- (a) the need to secure that the making and renewal of control orders and the imposition and modification of the obligations contained in such orders are properly reviewed; and
- (b) the need to secure that disclosures of information are not made where they would be contrary to the public interest. 20

Initial exercise of relevant powers

- 3 (1) This paragraph applies –
- (a) on the first occasion after the passing of this Act on which the relevant powers are exercised in relation to control order proceedings and relevant appeal proceedings in England and Wales; and 25
- (b) on the first occasion after the passing of this Act on which they are so exercised in relation to control order proceedings and relevant appeal proceedings in Northern Ireland.
- (2) On each of those occasions – 30
- (a) the relevant powers may be exercised by the Lord Chancellor, instead of by the person by whom they are otherwise exercisable; and
- (b) the Lord Chancellor is not required, before exercising the powers, to undertake any consultation that would be required in the case of rules made by that person. 35
- (3) The Lord Chancellor must –
- (a) consult the Lord Chief Justice of England and Wales before making any rules under this paragraph in relation to England and Wales; and

- (b) consult the Lord Chief Justice of Northern Ireland before making any rules under this paragraph in relation to Northern Ireland.
- (4) The requirements of sub-paragraph (3) may be satisfied by consultation that took place wholly or partly before the passing of this Act.
- (5) Rules of court made by the Lord Chancellor in exercise of the relevant powers in relation to proceedings in Northern Ireland shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and section 56 of the Judicature (Northern Ireland) Act 1978 (c. 23) (statutory rules procedure) does not apply to them. 5

Special powers to make rules of court 10

- 4 (1) Rules of court made in exercise of the relevant powers may, in particular –
 - (a) make provision about the mode and burden of proof in control order proceedings and about evidence in such proceedings;
 - (b) enable or require such proceedings to be determined without a hearing; and 15
 - (c) make provision about legal representation in such proceedings.
- (2) Rules of court made in exercise of the relevant powers may also, in particular –
 - (a) make provision enabling control order proceedings or relevant appeal proceedings to take place without full particulars of the reasons for decisions to which the proceedings relate being given to a relevant party to the proceedings or his legal representative (if he has one); 20
 - (b) make provision enabling the relevant court to conduct proceedings in the absence of any person, including a relevant party to the proceedings and his legal representative (if he has one); 25
 - (c) make provision about the functions in control order proceedings and relevant appeal proceedings of persons appointed under paragraph 7; and
 - (d) make provision enabling the relevant court to give a relevant party to control order proceedings or relevant appeal proceedings a summary of evidence taken in his absence. 30
- (3) Rules of court made in exercise of the relevant powers must secure –
 - (a) that the Secretary of State has the opportunity in all control order proceedings and relevant appeal proceedings to apply to the relevant court for an order prohibiting the disclosure of relevant matters (whether to a relevant party or to his legal representative or otherwise); 35
 - (b) that the relevant court always considers such an application in the absence of every relevant party and of his legal representative (if he has one); and 40
 - (c) that the Secretary of State is not required for the purposes of any control order proceedings or relevant appeal proceedings to disclose anything to the relevant court, or to any other person, where he does not propose to rely on it in those proceedings. 45
- (4) In sub-paragraph (3) “relevant matters”, in relation to any proceedings, means –

-
- (a) anything on which the Secretary of State is proposing to rely in the proceedings; or
 - (b) the reasons for decisions to which the proceedings relate.
- (5) Rules of court made in exercise of the relevant powers may provide for –
- (a) the making by the Secretary of State or the controlled person, at any time after a control order has been made, of an application to the court for an order requiring anonymity for that person; and 5
 - (b) the making by the court, on such an application, of an order requiring such anonymity;
- and the provision made by the rules may allow the application and the order to be made irrespective of whether any other control order proceedings have been begun in the court. 10
- (6) Rules of court may provide for the Court of Appeal or the Inner House of the Court of Session to make an order in connection with any relevant appeal proceedings requiring anonymity for the controlled person. 15
- (7) In sub-paragraphs (5) and (6) the references, in relation to a court, to an order requiring anonymity for the controlled person are references to an order by that court which imposes such prohibition or restriction as it thinks fit on the disclosure –
- (a) by such persons as the court specifies or describes, or 20
 - (b) by persons generally,
- of the identity of the controlled person or of any information that would tend to identify him.

Use of advisers

- 5 (1) In any control order proceedings the court may, if it thinks fit – 25
- (a) call in aid one or more advisers appointed for the purpose by the Lord Chancellor; and
 - (b) hear and dispose of the proceedings with the assistance of the adviser or advisers.
- (2) Rules of court may regulate the use of advisers in accordance with the power conferred by this paragraph. 30
- (3) The Lord Chancellor may, out of money provided by Parliament, pay such remuneration, expenses and allowances to advisers appointed for the purposes of this paragraph as he may determine.

Legal representation of parties to control order proceedings 35

- 6 In control order proceedings or relevant appeal proceedings, a party to the proceedings is entitled to be legally represented except in so far as rules of court made in exercise of the relevant powers otherwise provide.

Special representation in control order proceedings

- 7 (1) The relevant law officer may appoint a person to represent the interests of a relevant party to relevant proceedings in any of those proceedings from which that party and his legal representative (if he has one) are excluded. 40
- (2) In sub-paragraph (1) “relevant proceedings” means –

- (a) control order proceedings; or
 - (b) proceedings on an appeal or further appeal relating to control order proceedings.
- (3) A person may be appointed under this paragraph –
- (a) in the case of an appointment by the Attorney General, only if he has a general legal qualification for the purposes of section 71 of the Courts and Legal Services Act 1990 (c. 41); 5
 - (b) in the case of an appointment by the Advocate General for Scotland, only if he is a person with appropriate rights of audience in Scotland; and 10
 - (c) in the case of an appointment by the Advocate General for Northern Ireland, only if he is a member of the Bar of Northern Ireland.
- (4) In sub-paragraph (3) “person with appropriate rights of audience in Scotland” means –
- (a) an advocate; or 15
 - (b) a solicitor with rights of audience by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46) in the Court of Session or the High Court of Justiciary.
- (5) A person appointed under this paragraph is not to be responsible to the person whose interests he is appointed to represent. 20
- (6) In this paragraph “the relevant law officer” means –
- (a) in relation to control order proceedings in England and Wales or proceedings on an appeal or further appeal relating to such proceedings, the Attorney General;
 - (b) in relation to proceedings in Scotland or proceedings on an appeal or further appeal relating to such proceedings, the Advocate General for Scotland; 25
 - (c) in relation to proceedings in Northern Ireland or proceedings on an appeal or further appeal relating to such proceedings, the Advocate General for Northern Ireland. 30
- (7) In relation to any time before the coming into force of section 27 of the Justice (Northern Ireland) Act 2002 (c. 26), references in this paragraph to the Advocate General for Northern Ireland are to have effect as references to the Attorney General for Northern Ireland.

Effect of court orders 35

- 8 (1) Where –
- (a) a control order,
 - (b) the renewal of such an order, or
 - (c) an obligation imposed by such an order,
- is quashed, the order, renewal or (as the case may be) obligation shall be treated for the purposes of section 6(1) and (2) as never having been made or imposed. 40
- (2) A decision by the court or on appeal from the court –
- (a) to quash a control order, the renewal of a control order or an obligation imposed by such an order, or 45
 - (b) to give directions to the Secretary of State in relation to such an order,

does not prevent the Secretary of State from exercising any power of his to make a new control order to the same or similar effect or from relying, in whole or in part, on the same matters for the purpose of making that new order.

Interception evidence

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9 (1) Section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of interception matters from legal proceedings) is amended as follows.

(2) In subsection (1), after paragraph (d) insert –

“(da) any control order proceedings (within the meaning of the Prevention of Terrorism Act 2005) or any proceedings arising out of such proceedings;”.

10

(3) In subsection (2) (persons disclosures to whom continue to be prohibited despite section 18), for “paragraph (e) or (f)” substitute “paragraphs (da) to (f)”.

15

(4) In that subsection, before paragraph (a) insert –

“(za) in the case of any proceedings falling within paragraph (da) to –

(i) a person who, within the meaning of the Schedule to the Prevention of Terrorism Act 2005, is or was a relevant party to the control order proceedings; or

20

(ii) any person who for the purposes of any proceedings so falling (but otherwise than by virtue of an appointment under paragraph 7 of that Schedule) represents a person falling within sub-paragraph (i);”.

25

Allocation to Queen’s Bench Division

10 In paragraph 2 of Schedule 1 to the Supreme Court Act 1981 (c. 54) (business allocated to Queen’s Bench Division), after sub-paragraph (b) insert –

“(ba) all control order proceedings (within the meaning of the Prevention of Terrorism Act 2005);”.

30

Interpretation of Schedule

11 In this Schedule –

“legal representative”, in relation to a relevant party to proceedings, does not include a person appointed under paragraph 7 to represent that party’s interests;

35

“relevant appeal proceedings” has the meaning given by paragraph 1(2);

“relevant court” –

(a) in relation to control order proceedings, means the court; and

(b) in relation to relevant appeal proceedings, means the Court of Appeal or the Inner House of the Court of Session;

40

“relevant party”, in relation to control order proceedings or relevant appeal proceedings, means any party to the proceedings other than the Secretary of State;

“relevant powers” has the meaning given by paragraph 1(2).

45

Prevention of Terrorism Bill

A

B I L L

To provide for the making against individuals involved in terrorism-related activity of orders imposing obligations on them for purposes connected with preventing or restricting their further involvement in such activity; to make provision about appeals and other proceedings relating to such orders; and for connected purposes.

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