

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Post-Charge Questioning of Terrorist Suspects

Section 22 – Post-charge questioning: England and Wales

65. *Subsection (2)* allows a judge of the Crown Court to authorise questioning of a person in England and Wales about an offence, for which they have been charged or after they have been officially informed that they may be prosecuted, where the offence was a terrorism offence (as defined in section 27) or where the judge considers the offence to have a terrorist connection (as defined in section 93).
66. *Subsection (3)* provides that the judge authorising post-charge questioning must specify the period during which questioning is authorised and may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.
67. *Subsection (4)* specifies that the time period for which questioning is authorised begins when questioning commences and runs continuously from that time irrespective of whether or not questioning stops. *Subsection (4)(b)* limits the period for which a judge can authorise questioning to a maximum of 48 hours before further authorisation must be sought.
68. *Subsection (5)* allows the judge to authorise the removal of a suspect to another place for the purposes of questioning. For example, this would allow a judge to authorise a suspect's removal from a prison to a police station for questioning.
69. *Subsection (6)* provides that a judge can authorise post-charge questioning under this section only if satisfied that further questioning of the person is necessary in the interests of justice, that the police investigation related to the suspect is being conducted diligently and expeditiously, and that it would not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge. Undue interference might arise for example if authorisation for questioning is sought too near to the time of the trial.
70. *Subsections (7) and (8)* provide that codes of practice under section 66 of PACE must make provision about post-charge questioning.
71. *Subsection (9)* extends the application of section 34(1) of the Criminal Justice and Public Order Act 1994, which allows adverse inferences to be drawn from an accused person's failure to mention facts when questioned, to cover post-charge questioning under this section.

Section 23 – Post-charge questioning: Scotland

72. *Subsection (2)* allows a sheriff to authorise questioning of a person in Scotland about an offence, for which they have been charged or when they have appeared on petition in respect of the offence, where the offence is a terrorism offence (as defined in section 27)

or where it appears to the sheriff that the offence has a terrorist connection (as defined in section 93).

73. *Subsection (3)* provides that the sheriff authorising post-charge questioning must specify the period during which questioning is authorised and may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.
74. *Subsection (4)* specifies that the time period for which questioning is authorised begins when questioning commences and runs continuously from that time irrespective of whether or not questioning stops. *Subsection (4)(b)* limits the period for which a judge can authorise questioning to a maximum of 48 hours before further authorisation must be sought.
75. *Subsection (5)* allows the sheriff to authorise the removal of a suspect to another place for the purposes of questioning. For example, this would allow a judge to authorise a suspect's removal from a prison to a police station for questioning.

Subsection (6) provides that a sheriff can authorise post-charge questioning under this section only if satisfied that further questioning of the person is necessary in the interests of justice, that the police investigation related to the suspect is being conducted diligently and expeditiously, and that it would not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge.

Section 24 – Post-charge questioning: Northern Ireland

76. *Subsection (2)* allows a district judge (magistrate's court) to authorise questioning of a person in Northern Ireland about an offence, for which they have been charged or after they have been officially informed that they may be prosecuted, by a constable where the offence is a terrorism offence (as defined in section 27) or where it appears to the judge that the offence has a terrorist connection (as defined in section 93).
77. *Subsections (3), (4), (5), and (6)* set out the same requirements for the authorisation of post-charge questioning in Northern Ireland as for England and Wales under *subsections (3), (4), (5), and (6)* of section 22.
78. *Subsections (7) and (8)* provide that codes of practice under Article 65 of PACE NI must make provision about post-charge questioning.
79. *Subsections (9) and (10)* amend the [Criminal Evidence \(Northern Ireland\) Order 1988 \(S.I. 1988/1987 \(N.I. 20\)\)](#) to allow adverse inferences to be drawn from an accused person's failure to mention facts when questioned, to cover post-charge questioning under this section.

Section 25 – Recording of interviews

80. [Section 25](#) requires post-charge questioning under sections 22 - 24 to be video-recorded with sound (*subsection (2)*).
81. Codes of practice must be issued for the video-recording of interviews which must be observed in post-charge questioning under sections 22 - 24 (*subsections (3) & (4)*). Any codes made under this section can make different provision for different parts of the UK (*subsection (5)*).

Section 26 – Issue and revision of code of practice

82. [Section 26](#) sets out the process for the issue and revision of a code of practice for the video-recording of post-charge questioning under section 25. The code of practice must first be published in draft and is brought into operation by an order; this order is subject to the affirmative resolution procedure.

*These notes refer to the Counter-Terrorism Act 2008
(c.28) which received Royal Assent on 26 November 2008*

Section 27 – Post-charge questioning: meaning of “terrorism offence”

83. **Section 27** sets out the terrorism offences to which sections 22 to 24 apply: the list of terrorism offences in *subsection (1)* includes offences under the Terrorism Act 2000 and the Terrorism Act 2006. These provisions will also apply to the ancillary offences associated with the offences listed (*subsection (2)*). *Subsections (3)* and *(4)* allow the Secretary of State to amend this list of offences by order; this is subject to the affirmative resolution procedure.