



Counter-Terrorism Act 2008

2008 CHAPTER 28

PART 2

POST-CHARGE QUESTIONING OF TERRORIST SUSPECTS

22 Post-charge questioning: England and Wales

- (1) The following provisions apply in England and Wales.
- (2) A judge of the Crown Court may authorise the questioning of a person about an offence—
 - (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
 - (b) after the person has been sent for trial for the offence,if the offence is a terrorism offence or it appears to the judge that the offence has a terrorist connection.
- (3) The judge—
 - (a) must specify the period during which questioning is authorised, and
 - (b) 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.
- (4) The period during which questioning is authorised—
 - (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
 - (b) must not exceed 48 hours.

This is without prejudice to any application for a further authorisation under this section.

- (5) Where the person is in prison or otherwise lawfully detained, the judge may authorise the person's removal to another place and detention there for the purpose of being questioned.

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- (6) A judge must not authorise the questioning of a person under this section unless satisfied—
- (a) that further questioning of the person is necessary in the interests of justice,
 - (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
 - (c) that what is authorised will not interfere unduly with the preparation of the person’s defence to the charge in question or any other criminal charge.
- (7) Codes of practice under section 66 of the Police and Criminal Evidence Act 1984 (c. 60) must make provision about the questioning of a person by a constable in accordance with this section.
- (8) Nothing in this section prevents codes of practice under that section making other provision for the questioning of a person by a constable about an offence—
- (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
 - (b) after the person has been sent for trial for the offence.
- (9) In section 34(1) of the Criminal Justice and Public Order Act 1994 (c. 33) (effect of accused’s failure to mention facts when questioned or charged: circumstances in which the section applies) after paragraph (b) insert—
- “; or
- (c) at any time after being charged with the offence, on being questioned under section 22 of the Counter-Terrorism Act 2008 (post-charge questioning), failed to mention any such fact,”.
- (10) Nothing in section 36 or 37 of that Act (effect of accused’s failure or refusal to account for certain matters) is to be read as excluding the operation of those sections in relation to a request made in the course of questioning under this section.

23 Post-charge questioning: Scotland

- (1) The following provisions apply in Scotland.
- (2) On the application of the prosecutor, a sheriff may authorise the questioning of a person about an offence—
- (a) after the person has been charged with the offence, or
 - (b) after the person has appeared on petition in respect of the offence,
- if the offence is a terrorism offence or it appears to the sheriff that the offence has a terrorist connection.
- (3) The sheriff—
- (a) must specify the period during which questioning is authorised, and
 - (b) 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.
- (4) The period during which questioning is authorised—
- (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
 - (b) must not exceed 48 hours.

This is without prejudice to any application for a further authorisation under this section.

- (5) Where the person is in prison or otherwise lawfully detained, the sheriff may authorise the person's removal to another place and detention there for the purpose of being questioned.
- (6) A sheriff must not authorise the questioning of a person under this section unless satisfied—
 - (a) that further questioning of the person is necessary in the interests of justice,
 - (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
 - (c) that what is authorised will not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge.
- (7) Evidence of any statement obtained from a person as a result of questioning under this section is not inadmissible solely because the questioning occurred after the person had been charged (or had appeared on petition).
- (8) In this section "charged" means charged by the police.

24 Post-charge questioning: Northern Ireland

- (1) The following provisions apply in Northern Ireland.
- (2) A district judge (magistrates' courts) may authorise the questioning of a person about an offence—
 - (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
 - (b) after the person has been committed for trial for the offence, if the offence is a terrorism offence.
- (3) The judge—
 - (a) must specify the period during which questioning is authorised, and
 - (b) may impose such conditions as appear to the judge to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.
- (4) The period during which questioning is authorised—
 - (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
 - (b) must not exceed 48 hours.

This is without prejudice to any application for a further authorisation under this section.

- (5) Where the person is in prison or otherwise lawfully detained, the judge may authorise the person's removal to another place and detention there for the purpose of being questioned.
- (6) A district judge (magistrates' courts) must not authorise the questioning of a person under this section unless satisfied—
 - (a) that further questioning of the person is necessary in the interests of justice,

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- (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
 - (c) that what is authorised will not interfere unduly with the preparation of the person's defence to the charge in question or any other criminal charge.
- (7) Codes of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) must make provision about the questioning of a person by a constable in accordance with this section.
- (8) Nothing in this section prevents codes of practice under that Article making other provision for the questioning of a person by a constable about an offence—
- (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
 - (b) after the person has been committed for trial for the offence.
- (9) In Article 3(1) of the Criminal Evidence (Northern Ireland) Order 1988 (S.I. 1988/1987 (N.I. 20)) (effect of accused's failure to mention facts when questioned or charged: circumstances in which the article applies) after sub-paragraph (b) insert—
- “; or
- (c) at any time after being charged with the offence, on being questioned under section 24 of the Counter-Terrorism Act 2008 (post-charge questioning), failed to mention any such fact,”.
- (10) Nothing in Article 5 or 6 of that Order (effect of accused's failure or refusal to account for certain matters) is to be read as excluding the operation of those Articles in relation to a request made in the course of questioning under this section.

25 Recording of interviews

- (1) This section applies to any interview of a person by a constable under section 22, 23 or 24 (post-charge questioning).
- (2) Any such interview must be video recorded, and the video recording must be with sound.
- (3) The Secretary of State must issue a code of practice about the video recording of interviews to which this section applies.
- (4) The interview and video recording must be conducted in accordance with that code of practice.
- (5) A code of practice under this section—
 - (a) may make provision in relation to a particular part of the United Kingdom, and
 - (b) may make different provision for different parts of the United Kingdom.

26 Issue and revision of code of practice

- (1) This section applies to the code of practice under section 25 (recording of interviews).
- (2) The Secretary of State must—
 - (a) publish a draft of the proposed code, and
 - (b) consider any representations made about the draft,
 and may modify the draft in the light of the representations made.

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- (3) The Secretary of State must lay a draft of the code before Parliament.
- (4) After laying the draft code before Parliament the Secretary of State may bring it into operation by order.
- (5) The order is subject to affirmative resolution procedure.
- (6) The Secretary of State may revise a code and issue the revised code, and subsections (2) to (5) apply to a revised code as they apply to an original code.
- (7) Failure to observe a provision of a code does not of itself render a constable liable to criminal or civil proceedings.
- (8) A code—
 - (a) is admissible in evidence in criminal and civil proceedings, and
 - (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

27 Meaning of “terrorism offence”

- (1) For the purposes of sections 22 to 24 (post-charge questioning) the following are terrorism offences—
 - (a) an offence under any of the following provisions of the Terrorism Act 2000 (c. 11)—
 - sections 11 to 13 (offences relating to proscribed organisations),
 - sections 15 to 19, 21A and 21D (offences relating to terrorist property),
 - sections 38B and 39 (disclosure of and failure to disclose information about terrorism),
 - section 54 (weapons training),
 - sections 56 to 58A (directing terrorism, possessing things and collecting information for the purposes of terrorism),
 - sections 59 to 61 (inciting terrorism outside the United Kingdom),
 - paragraph 14 of Schedule 5 (order for explanation of material: false or misleading statements),
 - paragraph 1 of Schedule 6 (failure to provide customer information in connection with a terrorist investigation),
 - paragraph 18 of Schedule 7 (offences in connection with port and border controls);
 - (b) an offence in respect of which there is jurisdiction by virtue of any of sections 62 to 63D of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc);
 - (c) an offence under section 113 of the Anti-Terrorism, Crime and Security Act 2001 (c. 24) (use of noxious substances or things);
 - (d) an offence under any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
 - sections 1 and 2 (encouragement of terrorism),
 - sections 5, 6 and 8 (preparation and training for terrorism),
 - sections 9, 10 and 11 (offences relating to radioactive devices and material and nuclear facilities);

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- (e) an offence in respect of which there is jurisdiction by virtue of section 17 of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc);
 - (f) an offence under paragraph 8 or 9 of Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 (c. 6) (offences in connection with searches for munitions and transmitters in Northern Ireland).
- (2) Any ancillary offence in relation to an offence listed in subsection (1) is a terrorism offence for the purposes of sections 22 to 24.
- (3) The Secretary of State may by order amend subsection (1).
- (4) Any such order is subject to affirmative resolution procedure.