

**EXPLANATORY MEMORANDUM TO  
THE TERRORISM ACT 2006 (DISAPPLICATION OF SECTION 25)  
ORDER 2009**

**2009 No.**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The purpose of this Order is to make the maximum period of pre-charge detention for terrorist suspects remain at 28 days for another year from 25th July 2009 (rather than have it revert to 14 days).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 Section 23 of the Terrorism Act 2006 increased the maximum period of pre-charge detention for terrorist suspects under Schedule 8 to the Terrorism Act 2000 from 14 days to 28 days. The commitment to have this extension of pre-charge detention subject to annual renewal was made during Parliamentary debates on what became the Terrorism Act 2006 and can be found in Lords Hansard, 13 December 2005, column 1216. This resulted in section 25 of the 2006 Act, which modifies Schedule 8 to the Terrorism Act 2000 to reduce the maximum period of detention under that Schedule from 28 days to 14 days.
- 4.2 This Order disapplies section 25 of the Terrorism Act 2006 for a period of one year beginning with 25th July 2009. Without this Order the modifications in section 25 of that Act would take effect because section 25(1) provides that section 25 is to apply to any time which is more than one year after the commencement of section 23 and is not disapplied by order under section 25(2). Section 23 was commenced on 25th July 2006 by S.I. 2006/1936.
- 4.3 The maximum period of pre-charge detention under Schedule 8 to the Terrorism Act 2000 has remained at 28 days since July 2006. An order was made under section 25(2) which came into force on 25th July 2007 (S.I. 2181) and a subsequent order was made under that section, which came into force on 25th July 2008 (S.I. 2008/1745). Both orders disapplied section 25 of the 2006 Act for a period of one year.
- 4.4 As a result of this instrument, the modifications in section 25 will now take effect on 25th July 2010, unless a further Order is made.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

## 6. European Convention on Human Rights

6.1 Vernon Coaker has made the following statement regarding Human Rights:

*“In my view the provisions of the Terrorism Act 2006 (Disapplication of Section 25) Order 2009 are compatible with the Convention rights”.*

## 7. Policy background

- *What is being done and why*

7.1 Section 23 of the Terrorism Act 2006 amended Schedule 8 to the Terrorism Act 2000 to increase the maximum period of detention without charge of terrorist suspects from 14 days to 28 days. The increase from 14 days to 28 days was and still is considered necessary as a result of the:

- Greater use of encrypted computers;
- Increasingly complex nature of terrorist networks;
- Increasingly international nature of terrorist networks meaning greater language difficulties and greater need to gather evidence from abroad;
- Difficulty of entering premises to search for evidence where it is suspected that chemical, biological, radiological or nuclear material may be present; and
- Need to intervene early in some terrorist investigations due to the public safety consequences of a successful terrorist attack. This means that suspects may have to be arrested earlier in an investigation than for other crimes and that there may be less opportunity to gather admissible evidence prior to the arrest.

7.2 The current threat level remains at Severe where an attack is highly likely. Since July 2005 when British terrorists attacked the London transport system, murdering 52, there have been numerous plots against UK citizens, including in London and Glasgow in June 2007 and Exeter in May 2008. Both the police and the Director of Public Prosecutions (DPP) have made it clear that the 28 day limit is necessary. Providing evidence to the Counter-Terrorism Bill Committee, the former Assistant Commissioner Bob Quick said: “In some investigations, we have seen [attack planning activity] materialise so quickly that on public safety grounds we have had to act pre-emptively before we have had the opportunity to exploit pre-arrest evidential opportunities. That places a huge burden on the investigating officer”. In other scenarios, where an attack has already taken place, there may be other reasons why terrorist investigations take longer than other investigations. For example following the discovery of a ‘bomb factory’ in Yorkshire after the 7<sup>th</sup> July attacks in London, it was over 2 weeks before safe access could be gained for the examination to begin.

7.3 From the time the power came into force in July 2006, 6 people have been held for between 27 and 28 days, 3 of whom were charged. Parliament last agreed to the renewal in July 2008.

## **8. Consultation outcome**

8.1 There is no requirement to consult on this instrument. However the topic of pre-charge detention has been the subject of considerable debate over the past 18 months in both Houses (in the context of the Counter-Terrorism Bill and the proposed extension of the detention limit to 42 days) and in the reviews carried out by the Home Affairs Committee and the Joint Committee on Human Rights.

## **9. Guidance**

9.1 No guidance is required as the Order does not change the law but rather continues to disapply section 25 of the Terrorism Act 2006 for a period of one year.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is likely to be negligible, although there will be some impact on the work of police, prisons and CPS.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 An Order made under section 25(2) of the Terrorism Act 2006 may only apply for a period of up to one year so fresh consideration is given annually to the need for the maximum period of pre-charge detention for terrorist suspects to remain at 28 days as opposed to 14.

12.2 In accordance with section 36 of the Terrorism Act 2006, an independent reviewer of terrorism legislation (currently Lord Carlile of Berriew Q.C.) reviews the operation of the provisions of Part 1 of that Act and the provisions of the Terrorism Act 2000 – including Schedule 8 to the 2000 Act and section 25 of the 2006 Act. His review and findings are published as a command paper on an annual basis.

## **13. Contact**

Alex Mitham at the Home Office (Tel: 020 7035 6639 or e-mail: [alex.mitham@homeoffice.gsi.gov.uk](mailto:alex.mitham@homeoffice.gsi.gov.uk)) can answer any queries regarding this instrument.