



Prevention of Terrorism Act 2005

2005 CHAPTER 2

Control orders

4 Power of court to make derogating control orders

- (1) On an application to the court by the Secretary of State for the making of a control order against an individual, it shall be the duty of the court—
 - (a) to hold an immediate preliminary hearing to determine whether to make a control order imposing obligations that are or include derogating obligations (called a “derogating control order”) against that individual; and
 - (b) if it does make such an order against that individual, to give directions for the holding of a full hearing to determine whether to confirm the order (with or without modifications).
- (2) The preliminary hearing under subsection (1)(a) may be held—
 - (a) in the absence of the individual in question;
 - (b) without his having had notice of the application for the order; and
 - (c) without his having been given an opportunity (if he was aware of the application) of making any representations to the court;but this subsection is not to be construed as limiting the matters about which rules of court may be made in relation to that hearing.
- (3) At the preliminary hearing, the court may make a control order against the individual in question if it appears to the court—
 - (a) that there is material which (if not disproved) is capable of being relied on by the court as establishing that the individual is or has been involved in terrorism-related activity;
 - (b) that there are reasonable grounds for believing that the imposition of obligations on that individual is necessary for purposes connected with protecting members of the public from a risk of terrorism;
 - (c) that the risk arises out of, or is associated with, a public emergency in respect of which there is a designated derogation from the whole or a part of Article 5 of the Human Rights Convention; and

Status: This is the original version (as it was originally enacted).

- (d) that the obligations that there are reasonable grounds for believing should be imposed on the individual are or include derogating obligations of a description set out for the purposes of the designated derogation in the designation order.
- (4) The obligations that may be imposed by a derogating control order in the period between—
- (a) the time when the order is made, and
 - (b) the time when a final determination is made by the court whether to confirm it,
- include any obligations which the court has reasonable grounds for considering are necessary as mentioned in section 1(3).
- (5) At the full hearing under subsection (1)(b), the court may—
- (a) confirm the control order made by the court; or
 - (b) revoke the order;
- and where the court revokes the order, it may (if it thinks fit) direct that this Act is to have effect as if the order had been quashed.
- (6) In confirming a control order, the court—
- (a) may modify the obligations imposed by the order; and
 - (b) where a modification made by the court removes an obligation, may (if it thinks fit) direct that this Act is to have effect as if the removed obligation had been quashed.
- (7) At the full hearing, the court may confirm the control order (with or without modifications) only if—
- (a) it is satisfied, on the balance of probabilities, that the controlled person is an individual who is or has been involved in terrorism-related activity;
 - (b) it considers that the imposition of obligations on the controlled person is necessary for purposes connected with protecting members of the public from a risk of terrorism;
 - (c) it appears to the court that the risk is one arising out of, or is associated with, a public emergency in respect of which there is a designated derogation from the whole or a part of Article 5 of the Human Rights Convention; and
 - (d) the obligations to be imposed by the order or (as the case may be) by the order as modified are or include derogating obligations of a description set out for the purposes of the designated derogation in the designation order.
- (8) A derogating control order ceases to have effect at the end of the period of 6 months beginning with the day on which it is made unless—
- (a) it is previously revoked (whether at the hearing under subsection (1)(b) or otherwise under this Act);
 - (b) it ceases to have effect under section 6; or
 - (c) it is renewed.
- (9) The court, on an application by the Secretary of State, may renew a derogating control order (with or without modifications) for a period of 6 months from whichever is the earlier of—
- (a) the time when the order would otherwise have ceased to have effect; and
 - (b) the beginning of the seventh day after the date of renewal.

- (10) The power of the court to renew a derogating control order is exercisable on as many occasions as the court thinks fit; but, on each occasion, it is exercisable only if—
- (a) the court considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for a derogating control order to continue in force against the controlled person;
 - (b) it appears to the court that the risk is one arising out of, or is associated with, a public emergency in respect of which there is a designated derogation from the whole or a part of Article 5 of the Human Rights Convention;
 - (c) the derogating obligations that the court considers should continue in force are of a description that continues to be set out for the purposes of the designated derogation in the designation order; and
 - (d) the court 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.
- (11) Where, on an application for the renewal of a derogating control order, it appears to the court—
- (a) that the proceedings on the application are unlikely to be completed before the time when the order is due to cease to have effect if not renewed, and
 - (b) that that is not attributable to an unreasonable delay on the part of the Secretary of State in the making or conduct of the application,
- the court may (on one or more occasions) extend the period for which the order is to remain in force for the purpose of keeping it in force until the conclusion of the proceedings.
- (12) Where the court exercises its power under subsection (11) and subsequently renews the control order in question, the period of any renewal still runs from the time when the order would have ceased to have effect apart from that subsection.
- (13) It shall be immaterial, for the purposes of determining what obligations may be imposed by a control order made by the court, whether the involvement in terrorism-related activity to be prevented or restricted by the obligations is connected with matters in relation to which the requirements of subsection (3)(a) or (7)(a) were satisfied.