

TERRORISM ACT 2006

EXPLANATORY NOTES

COMMENTARY

Definitions

Part 2

Section 23 – Extension of period of detention of terrorist suspects

107. This section contains amendments to Schedule 8 to the TACT, which deals, among other things, with extension of detention prior to charging of those arrested under section 41 of the TACT. The original maximum period of detention of seven days was extended to a maximum of 14 days by section 306 of the Criminal Justice Act 2003.

Subsections (2), (5) and (11)

108. **Subsection (2)** widens the group of people who may apply for a warrant of further detention under paragraph 29 of Schedule 8 and for an extension of detention under paragraph 36 of Schedule 8. At the moment only a police officer of at least rank of superintendent may make those applications. As amended, in England and Wales a Crown Prosecutor, in Scotland a procurator fiscal or the Lord Advocate, in Northern Ireland the Director of Public Prosecutions for Northern Ireland, and anywhere in the UK a police officer of the rank of superintendent or above may apply for a warrant of further detention or for extension of the period of detention. As a consequence of this change **Subsection (5)** makes an amendment to paragraph 34(1) of Schedule 8 to the TACT. It substitutes the word “person” for “officer” in that provision, ensuring that all those listed in subsection (2) have the power to apply to the judge presiding over the extension of detention hearing to have information that forms part of that application withheld from a person to whom an application relates. **Subsection (11)** makes a further consequential change to substitute a new paragraph 37 into Schedule 8. Paragraph 37 provides that any detained person must be released if the grounds on which his continued detention was authorised are no longer met and there is no other reason for him to be held. The new paragraph 37 is expanded so that as well as referring to a police officer deciding if continued detention is justified it also refers to other people that may be in charge of the case.

Subsections (3) and (4)

109. **Subsection (3)** amends paragraph 29(3) of Schedule 8 so that when a court agrees to an extension of the period of detention, the period of the extension will normally be seven days. This is subject to new sub-paragraph (3A). At the moment the extension can be for anything up to seven days. **Subsection (4)** inserts a new subparagraph (3A) into paragraph 29 that provides that the court may issue a warrant of further detention for less than seven days if either the application for the warrant specifies a shorter time period or the judicial authority is satisfied that there are circumstances that mean that an extension for as long as seven days is inappropriate.

Subsection (6)

110. **Subsection (6)** amends, and inserts new sub-paragraphs (1A) and (1B) into paragraph 36 of Schedule 8, which deals with the extension of warrants of further detention. The new sub-paragraphs provide that, if an application is to extend detention beyond 14 days from the relevant time it must be made to a senior judge. If an application is to extend detention for no more than 14 days from the relevant time the application must be made to a judicial authority, unless an application has previously been made to a senior judge. At the moment all applications under paragraph 36 are made to a judicial authority. **Subsection (10)** inserts a definition of senior judge into paragraph 36. Senior judge is defined, in England, Wales and Northern Ireland as a judge of the High Court and, in Scotland as a judge of the High Court of Justiciary. A judicial authority is already defined in paragraph 29(4) of Schedule 8 as, in England and Wales, a District Judge (Magistrates' Courts) who is designated for the purposes of Part 3 of Schedule 8 by the Lord Chancellor, in Scotland, a sheriff and, in Northern Ireland, a county court judge or a resident magistrate designated for the purposes of Part 3 of Schedule 8 by the Lord Chancellor. The relevant time is defined in paragraph 36(3B) of Schedule 8 as either, the time of a person's arrest under section 41 of the TACT or, if he was detained under Schedule 7 to the TACT when he was arrested under section 41, the time his examination under that Schedule began.

Subsection (7)

111. **Subsection (7)** further amends paragraph 36 of Schedule 8. The amendments have two effects. Firstly, each period of extension must be for seven days unless the application asks for a shorter period or the judicial authority (or senior judge) to which the application is made is satisfied that there are circumstances which mean that it would be inappropriate to detain the suspect for a further seven days. Secondly, the maximum period that a warrant of further detention can last in total is extended from 14 days to 28 days. In cases where detention for a further seven days would exceed the 28 day limit, the senior judge can only authorise continued detention up to the 28 day limit.

Subsections (8) and (9)

112. **Subsection (8)** amends paragraph 36(4) of Schedule 8 to provide that paragraphs 30(3) and 31 to 34 of Schedule 8 (which deal with notice of applications, grounds for extension, representation and withholding of information) are to apply to applications to senior judges as they apply to applications to judicial authorities but references to judicial authority are to be read as references to senior judge. **Subsection (9)** makes a consequential amendment to paragraph 36(5).

Subsection (12)

113. **Subsection (12)** sets out that the amendments made to the procedures for extension of detention under Schedule 8 of the TACT shall not apply if the arrest of the person under detention occurred before the commencement of this section of the Act, or if his examination under Schedule 7 to the TACT began before the commencement of this section of the Act.