### **TERRORISM (NORTHERN IRELAND) ACT 2006**

### **EXPLANATORY NOTES**

#### INTRODUCTION

- 1. These explanatory notes relate to the Terrorism (Northern Ireland) Act which received Royal Assent on 16th February 2006. They have been prepared by the Northern Ireland Office in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- 2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not appear to require any explanation or comment, none is given.

#### **BACKGROUND AND SUMMARY**

- 3. The main purpose of the Act is to extend the life of Part 7 of the Terrorism Act 2000 (c.11) ("2000 Act"). The 2000 Act reformed and extended previous counterterrorism legislation. It placed counter-terrorism laws on a permanent footing in the UK in line with the recommendations made by Lord Lloyd of Berwick's *Inquiry into legislation against terrorism* (Cmnd.3420,1996) and the proposals in the Home Office consultation document *Legislation against Terrorism* (Cmnd.4178,1998). It was intended to combat all forms of terrorism, not just terrorism connected with the affairs of Northern Ireland. It provides a range of measures designed to prevent terrorism and support the investigation of terrorist crime and extends UK wide.
- 4. Part 7 of the 2000 Act contains provisions which extend only to Northern Ireland. There has been provision of special counter terrorism powers in Northern Ireland for over thirty years. These provisions are a direct response to the security situation that exists in that part of the UK. Under the Belfast ('Good Friday') Agreement (Cmnd.3883,1998) the Government made a commitment to make a return to normal security arrangements in Northern Ireland as early as possible, consistent with the level of terrorist threat. Therefore, unlike the rest of the 2000 Act which is permanent, the Part 7 provisions are temporary in nature and have been subject to annual renewal by order subject to the affirmative resolution procedure. Part 7 is also time-limited and in the absence of further primary legislation would have expired at the end of 18th February 2006. The Part 7 provisions are summarised in paragraphs 9 to 15 below.

- 5. In the Joint Declaration by the British and Irish Governments in April 2003 the Government set out that in the context of the definitive transition to exclusively peaceful and democratic means, and recognising the changed environment brought about by the new policing arrangements and structures, security normalisation in Northern Ireland would be implemented over a defined timeframe. A copy of the Joint Declaration has been placed in the library of both Houses. In Annex 1 to the Joint Declaration the Government set out a two year programme of normalisation that would be implemented in the context of an enabling environment. This programme includes a phased reduction in troop levels based in Northern Ireland, the removal of army observation posts and bases and the de-fortification of police stations. The programme also envisaged that the counter terrorism legislation particular to Northern Ireland would be repealed by the end of the two year period.
- 6. The IRA statement of 28th July 2005 stated that its leadership had formally ordered an end to its armed campaign. A copy of this has been placed in the library of both Houses. The Government responded to this statement by updating and triggering Annex 1 to the Joint Declaration on 1st August 2005. Under the Annex the Government is committed to the repeal of the Part 7 provisions by 31st July 2007 provided the enabling environment is established and maintained. At the time the Bill which resulted in this Act was introduced into Parliament, the Government assessed the security situation and determined that the Part 7 provisions remain necessary until the end of the normalisation programme. This Act therefore makes provision for those Part 7 provisions currently in force (excluding section 78) to remain in force until 31st July 2007.
- 7. The Government also took the view that it would be prudent to make legislative provision in case the security situation does not improve sufficiently to allow for the Part 7 provisions to cease to have effect in July 2007. The Act therefore makes provision to enable the Secretary of State to extend the provisions of Part 7 by order for a specified period ending before 1st August 2008.
- 8. The Act additionally makes provision to:
  - Add the offences created by the Prevention of Terrorism Act 2005 (c.2) ("2005 Act") to the list of scheduled offences under Part 7 of the 2000 Act;
  - Ensure that all scheduled offences are subject to the Attorney General's discretionary power to deschedule an offence;
  - Repeal those provisions of Part 7 which are not currently in force together with section 78 of the 2000 Act (which relates to the sentencing of children convicted of a scheduled offence);
  - Retain in force section 11 of, and Schedule 2 to, the Justice (Northern Ireland) Act 2004 (c.4) ("2004 Act") until 31st July 2007. These provisions ensure that breaches of bail in scheduled cases are dealt with in a similar way to non-

scheduled cases; and

• Allow the Secretary of State to make, by order, the transitional and consequential provision necessary on the Part 7 provisions ceasing to have effect.

### SUMMARY OF THE MAIN PART 7 PROVISIONS PRESERVED BY THIS ACT

#### Sections 65-80 and Schedule 9: Diplock Provisions

- 9. These sections make special judicial arrangements for prosecutions relating to paramilitaries and the situation in Northern Ireland and evidential provision in relation to such prosecutions. The most significant provisions are set out below:
  - Section 65 and Schedule 9 define which offences qualify for special treatment because they are terrorist offences or are offences related to the situation in Northern Ireland ("scheduled offences") and give the Attorney General a discretion in certain cases to certify that an offence should not be treated as a scheduled offence.
  - Section 67 provides that in the case of a scheduled offence bail cannot be granted by a magistrate. The provision owes it origin to the fact that prior to its introduction, when magistrates were dealing with bail applications in terrorist cases, the courts became crowded with people who tried to intimidate the court.
  - Sections 72 and 73 provide that time limits may be set for the stages of proceedings leading up to trial in scheduled cases. The power has never been used, although an administrative time limit scheme is in operation.
  - Section 75 provides for the mode of trial on indictment of scheduled offences to be by a court sitting without a jury "a Diplock trial" but with all the powers, authorities and jurisdiction of the jury court. The Diplock Court system dates back to 1972 when the Diplock Commission found that the jury system as a means of trying terrorist crime was under strain and in danger of breaking down. It highlighted the danger of perverse acquittals and intimidation of jurors. There is an unfettered right of appeal from the decision of the trial judge.

### Section 81-90, 95 and Schedule 10: Police and Army Powers

10. These provisions provide powers enabling the army to operate independently of the police in Northern Ireland. They also provide additional powers to the police

for use in the prevention and investigation of terrorist crime. The provisions include powers to enter premises, to arrest, to stop and search, to search and seize, to examine documents and to stop and question.

### **Section 91-4: Road Closures and Land Requisitions**

11. These sections allow for the requisition of land (on the authorisation of the Secretary of State), the temporary closure of roads (by police and army) and the permanent closure of roads (by order of the Secretary of State). The powers are necessary in providing land for police and army bases and to provide protection for residents at sectarian interfaces where the fear of attack by the opposing community remains real.

#### Section 96: Regulation-Making Power for the Secretary of State

12. This section enables the Secretary of State to make regulations for the preservation of peace and the maintenance of order. The power is wide ranging. Regulations made under it are subject to the affirmative resolution procedure. The Northern Ireland (Emergency Provisions) Regulations 1991 (S.I.1991/1759) and the Northern Ireland (Emergency Provisions) Regulations 1975 (S.I. 1975/2213) were made under the predecessor of this power and remain in force.

#### Section 98-101 and 104: Safeguards

13. These sections provide safeguards in the operation of Part 7 including the provision for the appointment of an Independent Assessor of Military Complaints Procedures and a power for the Secretary of State to make Codes of Practice in relation to the police and army powers under Part 7.

#### Section 106 and Schedule 13: Regulation of Private Security Industry

14. These provisions provide for the regulation of the private security industry in Northern Ireland.

### **Section 108: Opinion Evidence**

15. Section 108 allows for the oral evidence of a police officer, of at least the rank of superintendent, to be admissible as evidence that the accused is or was a member of a specified organisation. The accused cannot be committed for trial, found to have a case to answer or convicted solely on the basis of this statement.

#### TERRITORIAL EXTENT

16. The Act extends only to Northern Ireland.

#### **COMMENTARY ON SECTIONS**

#### Section 1: Continuance in force of Part 7 of the Terrorism Act 2000

- 17. The majority of the Part 7 provisions came into force on 19th February 2001. Section 112(1) provides for Part 7 to cease to have effect at the end of a period of one year from that date. However, section 112(2) enables the Secretary of State to provide by order that any Part 7 provision currently in force is to continue in force for a further twelve months. Such an order is subject to either the affirmative resolution procedure (section 123(4)(f)) or the urgency procedure (section 123(5)). Section 112(4) provides that Part 7 shall cease to have effect at the end of a five year period from the date on which it came into force (i.e. at the end of 18th February 2006).
- 18. The majority of the provisions in Part 7 have been continued in force by the following annual orders:
  - The Terrorism Act 2000 (Continuance of Part VII) Order 2002 (S.I.2002/365);
  - The Terrorism Act 2000 (Continuance of Part VII) Order 2003 (S.I.2003/427);
  - The Terrorism Act 2000 (Continuance of Part VII) Order 2004 (S.I. 2004/431); and
  - The Terrorism Act 2000 (Continuance of Part VII) Order 2005 (S.I.2005/350).

The Terrorism Act 2000 (Continuance of Part VII) Order 2005 provided for the majority of the Part 7 provisions, with the exception of those set out below, to remain in force up to and including 18th February 2006. The following provisions of Part 7 are not currently in force:

- Section 67(3) and (4);
- Sections 70 and 71;
- Section 76;
- Section 97;
- Section 100, which has never been brought into force;

- Paragraph 36 of Schedule 4; and
- Paragraphs 19 to 21 of Schedule 5.
- 19. Subsections (1) and (2) of section 1 provide that those Part 7 provisions which are in force on 18th February 2006 (excluding section 78) (the "extended provisions") will continue in force after that date but will cease to have effect at the end of 31st July 2007. The Secretary of State may, before 31st July 2007, continue to bring the extended provisions in and out of force by order under section 112(2).
- 20. Subsection (3) enables the Secretary of State to provide by order for any of the extended provisions to continue in force for a specified period ending before 1st August 2008. Such an order is subject to the affirmative resolution procedure (subsection (8)). Without further primary legislation the extended provisions cannot be continued in force past that date.
- 21. Section 112(2)(c) of the 2000 Act enables the Secretary of State to provide by order for any provision of Part 7 which is not in force to come into force and remain in force for a period not exceeding twelve months. Subsection (4) amends section 112(2)(c) of the 2000 Act so that the life of an extended provision cannot be continued beyond 1st August 2007. Subsection (6)(a) makes specific provision to enable an order under subsection (3) to amend this date to 1st August 2008.
- 22. Section 11 of, and Schedule 2 to, the 2004 Act deal with the enforcement of bail granted under section 67 of the 2000 Act. These provisions ensure that those granted bail under section 67 are, as regards enforcement, in the same or a similar position to those who are granted bail for non-scheduled offences. Section 11 creates a duty to surrender to custody for those granted bail in scheduled cases under section 67 of the 2000 Act. The duty is either a duty to surrender to the custody of a court, or to surrender to the custody of the governor of a prison (the latter duty is to cover those released on compassionate bail).
- 23. Section 11(4) of the 2004 Act provides that Section 11 and Schedule 2 will cease to have effect on the same day as Part 7 of the 2000 Act or such earlier date as the Secretary of State may by order appoint.
- 24. Subsection (5) amends Section 11(4)(a) so that section 11 and Schedule 2 will cease to have effect as from the end of 31st July 2007 or such earlier date as the Secretary of State may by order appoint. Subsection (6)(a) makes specific provision to enable an order under subsection (3) to amend the 2004 Act provision so that these 2004 Act provisions cease to have effect as from the end of 31st July 2008.
- 25. Paragraph 37 of Schedule 4 to the 2000 Act, which makes it an offence to contravene a restraint order, is treated as a Part 7 provision (section 112(5)(a)). Subsection (9) preserves this position with effect that, in common with the other extended provisions, if paragraph 37 continues in force it will cease to have effect on

31st July 2007 (subject to an order under *subsection (3)*).

#### **Section 2: Repeal of certain provisions**

- 26. By virtue of section 1 those provisions of Part 7 which are in force on 18th February 2006, other than section 78, are preserved by this Act. Section 2 makes provision to ensure that those provisions which are not in force on 18th February 2006, together with section 78, are repealed since the Government no longer considers them necessary.
- 27. Subsection (1) ensures that the provisions to be repealed cannot be brought back into force by an order under section 112(2)(c) of the 2000 Act or continued in force by an order under section 1(3).
- 28. The provisions to be repealed are as follows:
  - Under section 67(3) a judge may, in his discretion, admit a person charged with a non-summary scheduled offence to bail unless satisfied that circumstances exist which are strong contra-indications to bail. Section 67(3) and (4) ceased to have effect on 19th February 2005 by virtue of the Terrorism Act 2000 (Continuance of Part VII Order) 2005. Lord Carlile, the Independent Reviewer of the 2000 Act, recommended that section 67(3) should cease to have effect in his 2003 and 2004 reports on the operation of the 2000 Act. Copies of these reports have been place in the libraries of both Houses. This was on the grounds that the exceptions to bail in section 67(3) are no wider than the exceptions to bail recognised by Article 5 of the European Convention on Human Rights and that there was no evidence that the provision affected the granting of bail since judges based their bail decisions on principles compatible with the European Convention on Human Rights. The lapse of section 67(4) was consequential on the lapse of section 67(3).
  - Sections 70 and 71 allow the Secretary of State to direct that young persons charged with scheduled offences are to be held in a prison or other place while on remand. This power derives from the time when remand homes were used for young persons. Since remand homes were not very secure, there was a high risk that a young person charged with a scheduled offence would escape, perhaps with the help of more experienced individuals. There was also a risk that children held in remand homes could be intimidated by paramilitary organisations with the aim of preventing the child from incriminating others at trial or during questioning. Developments in the youth justice system rendered sections 70 and 71 obsolete. In the rare event that a young person is charged with a scheduled offence they would now be accommodated at Hydebank Young Offenders Centre or the Juvenile Justice Centre which offer the level of

security required. Sections 70 and 71 ceased to have effect on 19th February 2005 by virtue of the Terrorism Act 2000 (Continuance of Part VII Order) 2005.

- Section 76 imposes an obligation on the court to exclude or disregard any confession evidence in scheduled cases which has been obtained by subjecting the accused to torture, inhuman or degrading treatment, violence or threat of violence, or in such a case to order a fresh trial to be heard before a differently constituted court before which the statement will be inadmissible. Section 76 ceased to have effect on 26th July 2002 by virtue of the Terrorism Act 2000 (Cessation of Effect of Section 76) Order 2002 (S.I. 2002/2141). The provisions of Article 74 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I.1989/1341 (N.I.12)) now apply where previously section 76 would have applied.
- Section 97(1) and (2) of the 2000 Act enables the Secretary of State to confer port and border control powers on the army by specifying them as "examining officers" under Schedule 7. This means that members of the armed forces can be designated to stand at airports and docks to examine people arriving in Northern Ireland in the same way as police and customs officials do at present. The power has been neither used nor sought on any occasion. Section 97(1) and (2) ceased to have effect on 19th February 2003 by virtue of the Terrorism 2000 Act (Continuation of Part VII) Order 2003.
- Section 97(3) enables the Secretary of State to make provisions about entering or leaving Northern Ireland by land. This provision has never been used. Section 97(3) ceased to have effect on 19th February 2004 by virtue of the Terrorism 2000 Act (Continuation of Part VII) Order 2004. This was in response to Lord Carlile's 2003 report in which he stated that it was difficult to foresee circumstances in which section 97(3) might be used and that the legislative provision was superfluous.
- Section 100 of the 2000 Act makes provision for the Secretary of State to issue a Code of Practice relating to the video recording without sound of police interviews and an order requiring interviews to be conducted in accordance with this Code. This provision was never brought into force as a Code of Practice was made under paragraph 3(2) of Schedule 8 of the 2000 Act which required the recording of police interviews with sound.
- Paragraph 36 of Schedule 4 to the 2000 Act, which enables the Secretary of State rather than the courts to make and enforce restraint orders, is treated as a Part 7 provision by virtue of section 112(5)(a). It ceased to have effect on 19th February 2003 by virtue of the Terrorism 2000 Act (Continuation of Part VII) Order 2003. This provision and its predecessor had not been used for many years. The police would now seek restraint orders through the courts in

appropriate cases.

- Paragraphs 19 to 21 of Schedule 5 to the 2000 Act enable the Secretary of State, in place of the courts, to authorise the search of premises in the investigation of terrorist finance or direction offences. The rationale for these powers was that they enabled the police to obtain a search warrant in certain cases without having to disclose sensitive intelligence or techniques to a court, a disclosure which might conceivably put someone's life in danger or otherwise jeopardise the investigation. They ceased to have effect as of 19th February 2003 by virtue of the Terrorism 2000 Act (Continuation of Part VII) Order 2003. These powers have not been used since 1998. The police see no operational need for these powers and are content to seek warrants thought the courts.
- 29. Under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I.1998/1504 (N.I.9)) ("1998 Order") a child who is convicted can be detained by an order of the court if the maximum sentence which can be imposed on an adult for the offence is fourteen years. Section 78 of the 2000 Act modifies the application of Article 45 to provide that if a child is convicted of a scheduled offence on indictment where the maximum sentence which can be imposed in the case of an adult is not less than five years the court can authorise the detention of a young person convicted of such an offence.
- 30. The origin of this provision lies partly in the historical lack of secure accommodation for juveniles serving custodial sentences in Northern Ireland. The court was empowered to order the detention of the child in such place and under such conditions as the Secretary of State may direct. This was intended to address the concern that remand homes were not secure places of detention and that a young person held there may be an escape risk or may be targeted by paramilitary organisations. This concern has been addressed by the provision of better juvenile accommodation in Northern Ireland and thus the provision is considered no longer necessary. Subsection(2)(d) of section 2 therefore makes provision for its repeal.

#### **Section 3: Scheduled offences**

- 31. Section 65 of, and Schedule 9 to, the 2000 Act define the "scheduled offences" which qualify for the special procedures and provisions set out in sections 66 to 80 because such offences are commonly committed by paramilitaries and terrorist organisations or are related to the situation in Northern Ireland.
- 32. Note 1 to Part 1 of the Schedule gives the Attorney General the power to certify that in particular cases certain offences listed in that Part are not to be treated as scheduled offences. This enables the Attorney General to ensure that an offence will not be subject to the special provisions if it is not related to the situation in

#### Northern Ireland.

- 33. Currently the Attorney General only has a discretion to de-schedule an offence if it is listed in the Schedule as being subject to Note 1. A concern has arisen that certain offences, such as those in paragraph 22 of Schedule 9 (for example, offences relating to financing proscribed organisations and to weapons training), that may be committed in circumstances not connected with the emergency in Northern Ireland would nevertheless have to be tried through the Diplock court system because they are not subject to Note 1. Thus cases related to international terrorism but unconnected with the situation in Northern Ireland would be tried without a jury in Northern Ireland but with a jury in Great Britain. The effect of *subsections* (1) and (2) is that all scheduled offences will now be subject to Note 1 and the Attorney General will have the power deschedule all the offences listed in the Schedule.
- 34. The purpose of *subsections* (3) to (5) is to add certain offences set out in the section 9 of the 2005 Act to the list of offences in Schedule 9 to the 2000 Act. The 2005 Act provides for the making of control orders which impose obligations considered necessary for purposes connected with preventing or restricting an individual's involvement with terrorism-related activity.
- 35. Section 9 of the 2005 Act creates three criminal offences in relation to control orders:
  - A person is guilty of an offence if, without reasonable excuse, he contravenes an obligation imposed on him by a control order (section 9(1));
  - A person is guilty of an offence if he fails, without reasonable excuse, to report to a specified person when first returning to the United Kingdom as required by the terms of the control order when the order has ceased to have effect (section 9(2));
  - A person is guilty of an offence if he intentionally obstructs a person delivering a notice setting out the terms of a control order under section 7(9) (section 9(3)).
- 36. The effect of *subsections* (4) and (5) is that an offence under the 2005 Act will only be treated as a scheduled offence if it is alleged to have been committed after the coming into force of the Act.

#### Section 4: Transitional provision in connection with the expiry of Part 7

37. Subsection (1) enables the Secretary of State by order to make transitional, saving and consequential provision as he considers appropriate in connection with the expiry of Part 7 provisions whether by virtue of section 112 of the 2000 Act or section 1 of this Act. Such an order would be subject to the affirmative resolution procedure

(subsection (5)).

- 38. Subsection (2) sets out a number of provisions which may be included in such an order:
  - There are a number of provisions within Part 7 of the 2000 which allow for the seizure of property. An order may make provision for anything seized under a Part 7 provision to be retained after the expiry of the Part 7 provisions (subsection (2)(a)) and to be returned or disposed of at a later date (subsection (2)(b)).
  - Section 91 of the 2000 Act allows a person with the authority of the Secretary of State to take possession of land and interfere with certain property if it is necessary for the preservation of peace or the maintenance of order. Section 91 has been used in the past to provide land for army barracks and watch towers. An order may allow any interference begun under section 91 to continue after Part 7 ceases to have effect (subsection (2)(c)) and may preserve the provisions which make it an offence to interfere with such action (subsection (2)(d)).
  - Section 94 of the 2000 Act provides the Secretary of State with the power to direct the closure or diversion of a specified road where he considers it necessary for the preservation of peace or the maintenance of order. An order may make provision for such roads to remain closed or diverted after Part 7 ceases to have effect (subsection (2)(e)). Section 94 also creates a number of offences in relation to interfering with a road closure or diversion. An order may also provide for the offences under section 94 to continue after the expiry of Part 7 in relation to any road that remains closed or diverted as a result of the order.
  - Section 102 of, and Schedule 12 to, the 2000 Act provide for a scheme for the payment of compensation by the Secretary of State where property is taken, occupied, damaged, destroyed or private property rights are otherwise interfered with as a result of the exercise of powers conferred by Part 7. An order may preserve this scheme after the expiry of Part 7 (subsection (2)(f)). This would enable compensation to be payable after the expiry of Part 7 both in relation to things done before expiry and things done after it under provisions preserved by the order.
  - Section 113 of the 2000 Act makes transitional provision in relation to certain Part 7 provisions ceasing to have effect. Section 113 is itself a Part 7 provision. It was therefore necessary to make provision in *subsection* (2)(g) to enable the relevant transitional provisions in section 113 to have effect, with or without modification, notwithstanding the fact that Part 7 itself may have ceased to have effect.

#### **COMMENCEMENT DATE**

39. The commencement date for the Act is the end of 18th February 2006. This is the date on which Part 7 would otherwise expire.

#### HANSARD REFERENCES

40. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament:

Stage	Date	Hansard reference
House of Commons		
Introduction	11 October 2005	Vol. 437 Col 169
Second Reading	31 October 2005	Vol. 438 Cols. 627-90
Committee	08 November 2005	Hansard Standing Committee E
Report and Third Reading	30 November 2005	Vol. 440 Cols. 289-354
House of Lords		
Introduction	01 December 2005	Vol. 676 Col 307
Second Reading	20 December 2005	Vol. 676 Cols. 1670-83
Committee	12 January 2006	Vol. 677 Cols. 137-40GC
Report Stage	30 January 2006	Vol. 678 Col 102
Third Reading	14 February 2006	Vol. 678 Col 1078

**Royal Assent** – 16 February 2006 House of Lords Hansard Vol. 678 Col. 1253 House of Commons Hansard Vol. 442 Col. 1579

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