

TERRORISM (NORTHERN IRELAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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provision to ensure that those provisions which are not in force on 18th February 2006, together with section 78, are repealed since the Government no longer considers them necessary.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 *Subsection (1)* ensures that the provisions to be repealed cannot be brought back into force by an order under section 112(2)(c) of the 2000 Act or continued in force by an order under section 1(3).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 The provisions to be repealed are as follows: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 placed 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,

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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 through 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

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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.