

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Notification Requirements

Supplementary provisions

Section 57 – Notification orders

151. This section gives effect to Schedule 4 to the Act, which makes provision for notification orders. The police may apply for such an order in respect of an individual dealt with outside the UK for an offence which corresponds to one which would trigger the notification requirements in the United Kingdom, and its effect is to make such a person subject to the notification requirements of Part 4.

Schedule 4 – Notification Orders

152. *Schedule 4* makes provision for notification orders. A notification order might be sought in respect of a national of the United Kingdom who has been convicted of a foreign terrorism offence and who is deported to the United Kingdom on release from prison abroad. It might also be sought in respect of a foreign national with such a conviction who is in or is coming to the United Kingdom.
153. *Paragraph 2* defines “corresponding foreign offence” (those offences a conviction for which may trigger an application being made for a notification order). These are acts which constitute an offence in the jurisdiction in which they are committed and which “correspond to an offence to which this Part applies”. This means that it would have been an offence under section 41 if committed in the United Kingdom (terrorism offences which, subject to the sentence threshold, automatically trigger the application of the notification requirements) or an offence with a terrorist connection.
154. *Paragraph 2(4)* provides that, on an application for a notification order, it will be deemed that an act corresponds to an offence to which Part 4 applies unless the person serves a notice disputing this and requiring the applicant to prove it or if the court allows the person to require such proof without the serving of a notice.
155. *Paragraph 3* sets out the three conditions for making a notification order. First, an individual must have been convicted of a corresponding foreign offence or been subject to a finding equivalent to one of insanity or disability and given a sentence or hospital order equivalent to that required for the notification requirements to apply where the conviction or relevant finding was in the UK (as set out in section 45). However, this condition is not met if the court is satisfied on the balance of probabilities that the foreign conviction, which is the basis for the application, was obtained as a result of a flagrant denial of the person’s right to a fair trial (*paragraph 3(3)*). The concept of a “flagrant” denial of the right to a fair trial derives from case law of the European Court of Human Rights, which has also been adopted in the domestic courts. The term is to be read as having the same meaning which it is given by that jurisprudence, rather than

having its dictionary meaning (see for example the case of *EM (Lebanon) v Secretary of State for the Home Department* [2008] UKHL 64).

156. The second condition, specified in [paragraph 3\(4\)](#), is that the sentence must either have been imposed after the commencement of Part 4, or when the Part was commenced the individual was imprisoned or detained as a result of that sentence, or would have been but for being unlawfully at large or otherwise temporarily out of custody or was on licence or equivalent. The third condition is that the period for which a person would be subject to the notification requirements under section 53 has not expired ([paragraph 3\(5\)](#)).
157. A court must make a notification order if these three conditions are met ([paragraph 3\(6\)](#)).
158. [Paragraph 4](#) sets out the circumstances in which the police may apply for a notification order and the procedure to be followed in England and Wales. The application must be made by the chief officer of police for the area where the individual resides, or where the officer believes the person is or intends to come. This would enable, for example, the chief officer of Kent Police to make an application in respect of a person who is currently in France but who is believed (by the chief officer) to have plans to arrive in Dover within the next few days. The application is to be made to the High Court.
159. [Paragraphs 5 and 6](#) make corresponding provision for Scotland and Northern Ireland. In Scotland, the application is to be made to the Court of Session.
160. [Paragraph 8](#) sets out the modifications to the notification provisions necessary to ensure they apply correctly in relation to a case where they apply by virtue of a notification order. In particular, section 47 (initial notification) is modified so that the requirement is for initial notification to be made within 3 days of the order being served.

Section 58 – Foreign travel restriction orders

161. This section gives effect to Schedule 5, which makes provision for foreign travel restriction orders which may, in specified circumstances, be made in respect of a person subject to the notification requirements.

Schedule 5 – Foreign Travel Restriction Orders

162. [Paragraph 1](#) of Schedule 5 introduces the concept of a foreign travel restriction order. Such an order may be made in respect of an individual subject to the notification requirements. This is a preventative order under which the court may prohibit the person from travelling abroad where this is necessary to prevent the person from engaging in terrorism activity abroad. The order may only impose such restrictions on travel as are necessary for such prevention.
163. [Paragraph 2](#) sets out the conditions for making a foreign travel restriction order. If the court is satisfied that these are met, it may make an order. First, the person must be subject to the notification requirements (including by virtue of a notification order). Second, the person must, since being dealt with for the offence, have behaved in a way that makes it necessary to prevent that person from taking part in terrorism activity outside the United Kingdom. “Terrorism activity” is defined in [paragraph 16](#) of this Schedule. In the case where the notification requirements apply to persons convicted etc before commencement, the person’s behaviour must have taken place since commencement. The standard of proof in respect of the behaviour of which the court must be satisfied will be the heightened civil standard described in *R v Crown Court of Manchester ex parte McCann* ([2002] UKHL39) as being virtually indistinguishable from the criminal one.
164. [Paragraph 3](#) sets out the circumstances in which the police may apply to a magistrates’ court for a foreign travel restriction order and the procedure for doing so in England and

Wales. *Paragraphs 4 and 5* make corresponding provisions for Scotland and Northern Ireland.

165. *Paragraph 6* provides that a foreign travel restriction order may prevent the person subject to it from travelling to any country outside the UK which is named or described in the order, travelling to any country outside the UK other than the countries named in the order (this may be used, for example, where the person is banned from travelling anywhere in the world other than to a named country which he may need to visit for family reasons) or travelling to any country outside the United Kingdom. A person subject to an order prohibiting all foreign travel must surrender all their passports at the police station specified in the order on or before the order takes effect or within a specified time. The person's passports must be returned as soon as is reasonably practicable after the order ceases to have effect. "Passport" is defined in section 60 and includes both foreign and UK passports and other travel documents.
166. *Paragraph 7* provides that the foreign travel restriction order lasts for a fixed period of not more than 6 months, to be specified in the order, and that where the person is already subject to a foreign travel restriction order, the earlier order ceases to have effect.
167. *Paragraphs 8* sets out provisions permitting the variation, renewal or discharge of a foreign travel restriction order in England and Wales. A person may wish to apply for a variation of their order if for example the order prohibits travel to a particular country but during the course of the order the person has to attend an urgent business meeting there. The police may wish to apply for a renewal of an order if, on the expiry of the previous order, they still have cause to believe that the person poses a risk of becoming involved in terrorism activity abroad. Any of the persons specified in *paragraph 8(1)* may make an application for an order varying, renewing or discharging a foreign travel restriction order.
168. *Paragraph 8(2)* provides that an application for variation, renewal or discharge may be made to the court which made the original order; or to a magistrates' court in the area where the subject of the order resides (this will generally be the case where the subject of the order is making the application); or to any magistrates' court in the police area of the chief officer of police if the police are making the application.
Paragraph 8(4) provides that the court considering the application must hear any person mentioned in *paragraph 8(1)* who wishes to be heard. Having done so, *paragraph 8(3)* allows the court to make any order varying, renewing or discharging the order it considers appropriate, subject to the restrictions in *paragraph 11*. *Paragraphs 9 and 10* make corresponding provision for Scotland and Northern Ireland.
169. *Paragraph 11* provides that a foreign travel restriction order may only be renewed or varied so as to contain prohibitions necessary to prevent the person subject to the order from taking part in terrorism activities outside the UK.
170. *Paragraph 12* provides, for England and Wales, a right of appeal to the Crown Court for the person subject to the order against (a) the making of a foreign travel restriction order or (b) against the making of an order varying, renewing or discharging a foreign travel order, or a refusal to make such an order. *Paragraphs 13 and 14* make corresponding provision for Scotland and Northern Ireland.
171. *Paragraph 15* makes it an offence for a person to, without reasonable excuse, breach any prohibition or fail to comply with a requirement contained within a foreign travel restriction order. *Paragraph 15(4)* provides that the court cannot make an order for conditional discharge where someone is convicted of this offence in England and Wales or Northern Ireland, or a probation order where the conviction is in Scotland.

Section 59– Application of Part to service offences and related matters

172. This section gives effect to Schedule 6 to the Act which provides that the notification provisions in Part 4 apply to persons dealt with in service courts in the same way they do to persons dealt with in civilian courts.

Schedule 6 – Notification Requirements: Application to Service Offences

173. This Schedule makes provision for the application of the notification requirements in Part 4 of the Act to offences in Armed Forces legislation (service offences). The Schedule prescribes which service offences the notification requirements will apply to, and the sentences and orders made by service courts which will trigger the notification requirements.

Section 60 – Minor definitions for Part 4

174. **Section 60** provides definitions of terms used in Part 4, including in Schedules 5 and 6.

Section 61 – References to a person being “dealt with” for an offence

175. **Section 61** defines what is meant by the various references in Part 4 to a person or an offence being “dealt with”.
176. Generally, this term is to mean when the court of first instance sentences a person or makes the person subject to a hospital order in respect of the offence (*subsections (1), (2) and (4)*).
177. However, *subsection (3)* makes provision for circumstances where the original decision is varied (for example the original sentence being altered, set aside or quashed (*subsection (7)*)). Where a conviction for a different offence is substituted and the conditions for the application of the notification requirements are also met in respect of that substitution, the person will be treated as if they had been dealt with at the time of the original decision. Otherwise, if the result of the variation is that the sentence threshold is not met, the notification requirements will be treated as never having applied; and if the sentence meets the threshold for the first time, the notification requirements will apply from the date of the variation. If the sentence is varied across one of the sentence thresholds for the notification periods that apply to adults, the notification period will be adjusted accordingly. *Subsections (5) and (6)* set out how the term “dealt with” is to be interpreted in the provisions relating to offences dealt with prior to commencement.