

EXPLANATORY MEMORANDUM TO
THE TERRORISM ACT 2006 (DISAPPLICATION OF SECTION 25)
ORDER 2008

2008 No. 1745

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 This Order disapplies section 25 of the Terrorism Act 2006 for a period of one year beginning with 25th July 2008. Section 25 modifies Schedule 8 to the Terrorism Act 2000 to reduce the maximum period of detention under that Schedule from 28 days to 14 days.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 Section 23 of the Terrorism Act 2006 increased the maximum period of pre-charge detention under Schedule 8 to the Terrorism Act 2000 from 14 days to 28 days. The commitment to have this extension of pre-charge detention subject to annual renewal was made during Parliamentary debates on what became the Terrorism Act 2006 and can be found in Lords Hansard, 13 December 2005, column 1216. This resulted in section 25 of the 2006 Act, which modifies Schedule 8 to the Terrorism Act 2000 to reduce the maximum period of detention under that Schedule from 28 days to 14 days.

4.2 This Order disapplies section 25 of the Terrorism Act 2006 for a period of one year beginning with 25th July 2008. Without this Order the modifications in section 25 of that Act would take effect because section 25(1) provides that section 25 is to apply to any time which is more than one year after the commencement of section 23 and is not disapplied by order under section 25(2). Section 23 was commenced on 25th July 2006 by S.I. 2006/1936.

4.3 An Order made under section 25(2) of the Terrorism Act 2006 disapplying section 25 of the 2006 Act for a period of one year came into force on 25th July 2007 (S.I. 2007/2181). As a result of this instrument, the modifications in section 25 will now take effect on 25th July 2009, unless a further Order is made.

5. Territorial Extent and Application

5.1 This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 Tony McNulty has made the following statement regarding Human Rights:

In my view the provisions of the Terrorism Act 2006 (Disapplication of Section 25) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 Section 23 of the Terrorism Act 2006 amended Schedule 8 to the Terrorism Act 2000 to increase the maximum period of detention without charge of terrorist suspects from 14 days to 28 days. This increase from 14 days to 28 days was considered necessary as a result of the:

- greater use of encrypted computers;
- increasingly complex nature of terrorist networks;
- increasingly international nature of terrorist networks meaning greater language difficulties and greater need to gather evidence from abroad;
- difficulty of entering premises to search for evidence where it is suspected that chemical, biological, radiological or nuclear material may be present;
- need to halt questioning to allow religious observance by detained people; and
- tendency of members of terrorist groups all to employ the same lawyers, limiting opportunities for questioning.

7.2 Section 25 of the 2006 Act created the requirement for the annual renewal by Parliament of the extension of the maximum period of pre-charge detention from 14 to 28 days.

7.3 The need for 28 days' pre-charge detention has clearly been demonstrated, with 6 people having been held for the maximum period, 3 of whom were charged, and Parliament agreed to its renewal in July 2007.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 Given the small number of arrests for terrorism, the impact on the public sector is likely to be negligible, although there will be some impact on the work of police and prisons.

9. Contact

Lisa Dillon at the Home Office (Tel: 020 7035 8959 or e-mail: lisa.dillon2@homeoffice.gsi.gov.uk) can answer any queries regarding this instrument.