

Home Office Circular: Counter-Terrorism and Border Security Act 2019

Part 1: Counter Terrorism

Chapter 1 (*Terrorist Offences*) and Chapter 2 (*Punishment and Management of Terrorist Offenders*)

Introduction

1. This circular is issued to inform law enforcement agencies, and other relevant public authorities, of certain provisions in Part 1 (counter terrorism) of the Counter-Terrorism and Border Security Act 2019 (“the Act”), which came into force on 12 April 2019. This circular does not constitute legal advice. It is not a statement of law and is not intended to provide a comprehensive description or interpretation of the provisions.
2. Unless otherwise indicated, the Act’s provisions extend to the entire UK.

Background

3. The Act received Royal Assent on 12 February 2019. Some of its provisions came into force immediately; the majority (including all of those covered by this circular) came into force on 12 April 2019; and the remainder will be commenced by regulations in due course.
4. The Act was introduced following a review of the UK’s counter-terrorism strategy which was announced by the Prime Minister on 4 June 2017, and which, in the Queen’s speech on 21 June 2017, it was confirmed would: “ensure that the police and security services have all the powers they need, and that the length of custodial sentences for terrorism-related offences are sufficient to keep the population safe”. That review was conducted in the context of the five terrorism attacks in the UK between March and September 2017, and Part 1 of the Act gives effect to legislative proposals arising from it.
5. Part 1 of the Act amends certain existing terrorism offences to update them for the digital age, to reflect contemporary patterns of radicalisation and developments in the terrorist threat, and to close gaps in their scope. It also introduces a new power for the Secretary of State to designate an area outside the UK which is associated with a risk of terrorism, which it would be an offence for UK nationals or residents to enter or remain in without reasonable excuse and for a non-exempt purpose. It increases the maximum penalties for certain terrorism offences, and strengthens other aspects of the sentencing framework, in particular bringing more terrorism offences within the scope of extended sentence provisions. And it amends police powers to manage risk and investigate terrorism offences: strengthening the notification requirements on convicted terrorists; updating biometric retention powers; and making clear that terrorism offences are within the definition of serious crime in the context of applications for a Serious Crime Prevention Order.

CHAPTER 1: TERRORISM OFFENCES

Section 1: Expressions of support for a proscribed organisation (*Section 12(1A) Terrorism Act 2000*)

6. Section 1 of the Act amends section 12 of the Terrorism Act 2000, by inserting new subsection (1A). Under section 12, as amended by the Act, it is an offence to:

- s12(1) - invite support for a proscribed organisation;
- s12(1A) – *express an opinion or belief that is supportive of a proscribed organisation, reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation;*
- s12(2) - arrange or manage a meeting in support of, to further the objectives of, or to be addressed by a member of a proscribed organisation; or
- s12(3) - address a meeting for the same purposes.

7. The new subsection (1A) offence covers similar ground to that at existing subsection (1) but is intended to close a gap in that offence. The existing 12(1) offence covers cases where a person expressly or implicitly invites another person to support a proscribed organisation. The ambit of this offence was considered by the Court of Appeal in 2016 in *R v Choudary and Rahman*. That judgment made clear that support need not be material, and can amount to general support or approval, but also that the invitation must be deliberate, that is to say that it will be necessary to prove an intention to influence another person to support the organisation. This was considered to leave a gap in a case where it is not possible to prove beyond reasonable doubt an intention to influence others to support a proscribed organisation, but where a person nonetheless makes inflammatory statements indicating their own support, and where there is a clear risk that this will have the harmful effect of influencing others to also support the organisation.

8. The new subsection (1A) offence has two elements:

- Firstly, the *actus rea*, or criminal act, requires that the individual expresses an opinion or a belief that is supportive of a proscribed organisation; and
- Secondly the *mens rea*, or mental element of the offence, requires that they do so in circumstances where they are reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.

9. The Act does not define what constitutes a supportive opinion or belief for the purpose of the first element, rather this has its ordinary meaning. Whether a particular opinion or belief that is expressed by a suspect is one that is supportive of a proscribed organisation must be determined on a case-by-case basis, considering both the content of any statement and all the circumstances in which it was made.

10. The Act also does not define what is meant by recklessness. This is a concept applicable across a number of other offences in the criminal law, and there is established caselaw on how it should be applied by the courts. In the 2003 case of *R v G and another* the Appellate Committee of the House of Lords ruled that a person acts recklessly where they are aware that, in the circumstances, there is a risk that their conduct will result in the proscribed outcome, and they nonetheless engage in the conduct in circumstances where a reasonable person would not.

Whether this test is met must be considered on a case-by-case basis, in the light of all the circumstances of the case. Unless and until jurisprudence develops further, this is the test that should be applied when considering whether an expression is a reckless one for the purposes of the new section 12(1A) offence.

11. To provide an example, in the context of the new section 12(1A) offence a person might act recklessly if he speaks of his own support for a proscribed organisation in the course of addressing an audience consisting primarily of individuals whom he believes are of an extremist mindset, and over whom he believes he has a degree of influence. In these circumstances the person will be aware of the risk that members of the audience will be influenced by him to support the proscribed organisation, and he will have acted recklessly if he nonetheless goes on to express an opinion or belief that is supportive of it.

12. The section 12(1A) offence is not limited in terms of the number of people to whom the opinion or belief must be expressed (this can be one, or many) or as to whether it must be expressed in a public or a private setting.

13. The maximum penalty for the section 12(1A) offence is 10 years' imprisonment. It is subject to extra-territorial jurisdiction as a result of section 6 of the Act. As a result of sections 9, 10 and 11 of the Act it is in the scope of the extended sentence provisions at: Chapters 5 and 5A of the Criminal Justice Act 2003 in England and Wales; section 210A of the Criminal Procedure (Scotland) Act 1995 in Scotland; and Part 2, Chapter 3 of the Criminal Justice (Northern Ireland) Order 2008 in Northern Ireland.

Section 2: Publication of images and seizure of articles (*Section 13 Terrorism Act 2000*)

14. Section 2 amends section 13 of the Terrorism Act 2000, inserting new subsections (1A) and (1B) which create an offence of publishing an image of an item or clothing or any other article, in such a way or in such circumstance as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation.

15. Existing section 13(1) of the 2000 Act provides an offence of wearing, carrying or displaying in a public place an item of clothing or other article, in the same circumstances. The 13(1) offence is likely to cover many situations in which an image depicting an article associated with a proscribed organisation is published, however its application will not necessarily be certain in cases where it is not clear that the article is "in a public place" (section 121 of the 2000 Act defines this as "*a place to which members of the public have access, whether or not for payment*"). This definition may not be satisfied, for example, if an image is published which depicts an item in a location that is not accessible to the public (for example an image of a flag being displayed at a private meeting), or if the image is posted to an online platform with a closed membership. The new section 13(1A) offence is intended to close this gap and put beyond doubt that it will always be an offence to publish an image falling within the terms of 13(1).

16. The new offence does not define publishing, rather this has its ordinary meaning, and should be interpreted broadly as covering any situation in which the suspect communicates or makes available an image to another person.

17. The offence is not automatically committed simply by displaying a flag or other item that is associated with a proscribed organisation. There are two limbs to the offence, both of which must be satisfied.

18. Firstly, an image must be published of an item of clothing or any other article (this refers to any type of item without limitation). This could be an image of a physical object such as a flag or other paraphernalia, as well as a depiction (for example a cartoon, drawing, design or digital image) of a logo, emblem or other graphic, which could potentially be reproduced on a flag or on other paraphernalia.

19. Secondly, the image must be published in such a way or in such circumstances as to arouse reasonable suspicion that the person who publishes it is a member or supporter of a proscribed organisation. It will be necessary to determine in all the circumstances of an individual case whether this requirement is met, but an example of circumstances giving rise to such a reasonable suspicion might be where a person publishes to a social media platform an image of an emblem or flag associated with a particular proscribed organisation, accompanied by comments suggesting support for that organisation, its methods or its objectives. In these circumstances a reasonable bystander might suspect that the person is a member or supporter of the organisation in question, and the offence may have been committed.

20. This second limb of the offence provides an important safeguard, by ensuring that a person who publishes an image associated with a proscribed organisation will not have committed the offence if they do so for legitimate or benign reasons. If a journalist publishes an image of the flag of a proscribed organisation in the course of a neutral report on that organisation or its activities, or if a historian or other academic were to neutrally publish such an image in a book or research paper, there would be no suggestion that they themselves were a member or supporter of the group, and they would not have committed the offence.

21. It is important to note that it does not matter if any flag, logo or emblem depicted is the precise and current version which is used by a particular proscribed organisation. The offence can be committed if all the circumstances of the publication of the image arouse a reasonable suspicion that the person is a member or supporter of a proscribed organisation. Such a reasonable suspicion can be aroused by the publication of an image if the logo or emblem depicted within the image is associated with a proscribed organisation but is not officially adopted by that organisation, if it has been historically but is not currently adopted by the organisation, or if it is a variant of or merely resembles the one that is officially adopted by the organisation.

22. It should be noted that the existing section 13(1) offence is structured in the same way, and that the same considerations therefore apply to it.

23. Section 2 of the Act also inserts new subsections (4), (5) and (6) to section 13 of the 2000 Act. These create a new power for a constable to seize any item of clothing or any other article if: (i) he reasonably suspects that it is evidence in relation to an offence under section 13(1) of the 2000 Act; and (ii) he is satisfied that it is necessary to seize the item in order to prevent the evidence being concealed, lost, altered or destroyed.

24. The constable may require the person to remove the item if they are wearing it, but this is subject to the limitation that they may not seize or require a person to remove an item of clothing that is being worn next to the skin or as underwear.

25. This complements existing powers of arrest and seizure in the Police and Criminal Evidence Act 1984. It is intended to allow evidence to be seized to support prosecution in a case where a constable suspects that a section 13(1) offence has been committed, but considers that the legal tests for an arrest (previously the only route through which an item could be seized as evidence) are not met, or that for operational reasons arrest is not appropriate in the circumstances (for example if it could lead to public disorder or could undermine the management of a public demonstration).

26. The existing maximum penalty of up to six months' imprisonment (on summary conviction only) for an offence under section 13 of the 2000 Act applies to the new subsection (1A) offence. The entirety of section 13 has extra-territorial jurisdiction, as a result of section 6 of the Act, but this is limited to UK national or residents.

Section 3: Obtaining or viewing material over the internet (*Section 58, Terrorism Act 2000*)

27. Section 3 of the Act amends section 58 of the Terrorism Act 2000. Under section 58(1) it is an offence to collect or make a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism (58(1)(a)), or to possess a document or record of that kind (58(1)(b)). A "record" is defined at section 58(2) as including a photographic or electronic record.

28. Section 3 is intended to update section 58 of the 2000 Act, to put beyond doubt its application to online activity. It does so firstly by inserting new subsection (1A), to clarify that the existing (1)(a) offence applies in a case where a person collects or makes a record of the information via the internet.

29. Secondly, section 3 also adds a further offence, at new subsection 58(1)(c), which is committed where a person views or otherwise accesses by means of the internet a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism. This closes a gap whereby it was not clear that the existing (1)(a) offence would be committed in a case where a person transiently accesses information on the internet, for example by streaming a video or viewing a website, without collecting or making a record of that information and without a document or record containing it entering their possession (which might require them to download and store a copy of the information on their device or other storage media).

30. Section 58 of the 2000 Act provides that it is a defence for a person charged under it to prove that they had a “reasonable excuse” for their actions. Relevant caselaw (the 2009 House of Lords judgment in *R v G and R v J*) provides that this must be an objectively verifiable reasonable excuse and must be determined by the jury in the light of the particular facts and circumstances of the individual case.

31. Section 118 of the 2000 Act sets out how the requirement to “prove” a reasonable excuse operates in practice. If the defendant “*adduces evidence which is sufficient to raise an issue with respect to the matter*” (the defence), then the burden shifts to the prosecution to disprove the defence beyond reasonable doubt. It is for juries to determine in all the circumstances of individual cases precisely what nature and extent of evidence is required to raise the defence, but the wording of section 118 sets a low threshold which is likely to be met where there is evidence to reasonably support a suggestion that the suspect has a reasonable excuse.

32. Section 3 of the Act inserts new subsection (3A) to section 58 of the 2000 Act. This provides an indicative list of categories of reasonable excuse, to clarify the effect of the defence. It sets out that cases in which a person has a reasonable excuse will include (but are not limited to) cases where:

- They did not know and had no reason to believe that the document or record contained, or was likely to contain, information likely to be useful to a terrorist ((3A)(a));
- Their action or possession of the information was for the purpose of carrying out work as a journalist ((3A)(b)(i)); or
- Their action or possession of the information was for the purpose of academic research ((3A)(b)(ii));

33. A reasonable excuse defence would need to be raised in court by a defendant in the event of a prosecution under section 58, and it would ultimately be for the jury in any given case to determine whether the prosecution had disproved that defence beyond reasonable doubt. However, in advance of that stage, consideration of whether the evidence suggests that a suspect may have a reasonable excuse is likely to be relevant to investigative and prosecutorial decisions, including whether it would be in the public interest to pursue a prosecution and whether there would be a realistic prospect of conviction.

34. The maximum penalty for an offence under section 58 of the 2000 Act (including the new 58(1)(c) offence added by section 3) is increased from 10 to 15 years by section 7 of the Act. Section 58 is subject to extra-territorial jurisdiction, limited to UK nationals and residents, as a result of section 63A of the 2000 Act.

35. As a result of sections 9, 10 and 11 of the Act, section 58 of the 2000 Act is in the scope of the extended sentence provisions at: Chapters 5 and 5A of the Criminal Justice Act 2003 in England and Wales; section 210A of the Criminal Procedure (Scotland) Act 1995 in Scotland; and Part 2, Chapter 3 of the Criminal Justice (Northern Ireland) Order 2008 in Northern Ireland.

Section 4: Entering or remaining in a designated area (Sections 58B and 58C, Terrorism Act 2000)

36. Section 4 inserts new sections 58B and 58C into the Terrorism Act 2000. Section 58C provides a power for the Secretary of State to designate an area outside the UK, if it is necessary for the purpose of protecting members of the public from a risk of terrorism to restrict UK nationals and residents from entering or remaining in the area. The precise boundaries of the area will be specified in the regulations which are laid before Parliament in order to bring the designation into force.

37. Section 58B of the 2000 Act creates an offence of entering or remaining in an area that has been designated under 58C. The offence is limited to UK nationals and residents, and it is also subject to a number of exemptions.

38. Section 58B(2) provides that it is a defence for a person charged with this offence to prove that they had a reasonable excuse for entering or remaining in the designated area. This does not provide any examples of categories of reasonable excuse, and most cases in which it is anticipated that a person might have a legitimate reason to enter a designated area will be covered by the list of exempt purposes at 58B(5) (see paragraph 42 below). Other than this, it operates in the same way as the reasonable excuse defence at section 58 of the 2000 Act and is similarly subject to section 118 of the 2000 Act (see paragraphs 30 to 33 above).

39. There is a period of grace of one month for individuals who are already travelling to, or are already in, an area on the day on which it is designated. This means that the offence is not committed if such a person leaves the area within one month (section 58B(3)). This period is calculated as beginning with the day on which the area is designated, so that if for example this was 5 January, the person would need to leave the area by 23:59 on 4 February.

40. A person does not commit the offence if they enter or remain in a designated area involuntarily, for example because they are detained (section 58B(4)(a)).

41. A person also does not commit the offence if they enter or remain in a designated area for one or more of the exempted purposes specified at 58B(5). In order to benefit from the exemption the person must enter or remain in the area solely for that purpose (58B(6)). If while they are within the area they engage in any other activity, which is not connected with that purpose, then unless that further activity itself provides a reasonable excuse for the purpose of section 58B(2), they will have committed the offence. This has the effect of preventing a person from relying on an exemption if they have, for example, travelled to a designated area and engaged in the provision of humanitarian aid for a week, and then spent a further week in the area for any other purpose which is not covered by an exemption and for which there is no reasonable excuse.

42. The specified exempt purposes are:

- (a) providing aid of a humanitarian nature;
- (b) satisfying an obligation to appear before a court or other body exercising judicial power;

- (c) carrying out work for the government of a country other than the United Kingdom (including service in or with the country's armed forces);
- (d) carrying out work for the United Nations or an agency of the United Nations;
- (e) carrying out work as a journalist;
- (f) attending the funeral of a relative or visiting a relative who is terminally ill;
- (g) providing care for a relative who is unable to care for themselves without such assistance.

43. In this list, "aid of a humanitarian nature" has its ordinary meaning, subject to one limitation. It excludes the provision of aid in contravention of internationally recognised principles and standards applicable to the provision of humanitarian aid (as a result of section 58B(9)(a)). The Act intentionally does not specify particular principles and standards. This partly reflects the fact that there is currently no single agreed set of universal principles, rather there are a number of broadly recognised sets of principles which may apply in different contexts (for example those set out by the UN Office for the Coordination of Humanitarian Affairs, or the fundamental principles of the International Committee of the Red Cross). It also allows the courts to take a flexible approach, depending on the circumstances of individual cases and to avoid the legislation becoming out of date as conventions in this area develop in the future. However, the purpose of this provision is to ensure that a person is not able to rely on this exemption if they provide humanitarian aid in a way that is clearly in breach of normal international standards. This may be for example if they have provided aid selectively in support of a terrorist organisation, or its members, rather than acting impartially on the basis of need.

44. Where this list refers to "carrying out work", this excludes any activity which would be a criminal offence if done in the UK (section 58B(9)(b)).

45. There is a further exemption from the offence at 58B(13) for any person acting on behalf of or holding office under the Crown. This will include civil servants and diplomats, police officers, members of the armed forces and intelligence agency staff. It will also cover individuals who are tasked or contracted by the Government to carry out any work, such as charities, NGOs or other agencies who may be tasked to deliver humanitarian aid or carry out development work, contractors supporting the armed forces, and individuals acting on behalf of the Crown in any other capacity.

46. The Act does not provide for any pre-authorisation or permission scheme, and it will not be possible for the Government to issue letters or other documents providing assurance to individuals wishing to enter a designated area for a legitimate purpose. The extent to which it is necessary to investigate any person returning to the UK from a designated area, whether to establish if they have committed an offence under section 58B or to establish what risk they may pose more generally, will be an operational matter for the police. And it will be for the police to consider on the basis of any investigation whether a person who does enter or remain in a designated area is covered by one of the exceptions, or has a reasonable excuse. Similarly, whether to bring a prosecution in a particular case will be for the Crown Prosecution Service.

47. The maximum penalty for the offence at section 58B(1) of the 2000 Act is 10 years' imprisonment. As a result of sections 9, 10 and 11 of the Act, it is in the scope of the extended sentence provisions at: Chapters 5 and 5A of the Criminal Justice Act 2003 in England and Wales; section 210A of the Criminal Procedure (Scotland) Act 1995 in Scotland; and Part 2, Chapter 3 of the Criminal Justice (Northern Ireland) Order 2008 in Northern Ireland.

Section 5: Encouragement of terrorism and dissemination of terrorist publications (*Sections 1 and 2, Terrorism Act 2006*)

48. Section 5 amends sections 1 and 2 of the Terrorism Act 2006 which contain, respectively, the offences of encouragement of terrorism and dissemination of terrorist publications. Those offences provide definitions of a statement which is an encouragement to terrorism, and a publication which is a terrorist publication. Prior to their amendment by section 5 these definitions required, among other things, that the members of the public to whom a statement is published or a publication is disseminated, are likely to understand the terrorist nature of the statement or the publication, and the intent of the person making it.

49. Section 5 amends these definitions so that they instead require that a hypothetical "reasonable person", rather than the specific person to whom the statement or dissemination is directed, would be likely to understand the nature of the statement or publication and the intent behind it. This closes a gap whereby the offence would not necessarily be committed in a case where a radicaliser sought to encourage a child or vulnerable adult to carry out an act of terrorism (or similarly disseminated a terrorist publication to them), if despite the harmful intentions of the radicaliser their target lacked the maturity or mental capacity to fully understand what they were being encouraged to do.

Section 6: Extra-territorial jurisdiction

50. Section 17 of the Terrorism Act 2006 provides extra-territorial jurisdiction (ETJ) in relation to a number of terrorism offences. This means that a person may be prosecuted in the UK for conduct that took place outside the UK, which would have been unlawful had it taken place here.

51. Section 6 adds a number of further offences to the existing list at section 17 of the 2006 Act, thereby extending ETJ to them. These offences are:-

- Section 1 Terrorism Act 2006 (encouragement of terrorism) already had a degree of ETJ, but this was limited to cases where a "convention offence" was being encouraged (this term refers to activity specified in certain international agreements, the full list of relevant UK offences is at Schedule 1 to the 2006 Act). The Act removes this limitation so that ETJ applies fully to the encouragement of any act of terrorism.
- Section 2 Terrorism Act 2006 (dissemination of terrorist publications).

- Section 12(1) or (1A) Terrorism Act 2000 (inviting support for, and recklessly expressing support for, proscribed organisations). Limited to where the offender is a UK national or resident.
- Section 13 Terrorism Act 2000 (wearing or displaying in a public place, or publishing an image of, an article etc associated with a proscribed organisation). Limited to where the offender is a UK national or resident.
- Section 4 Explosive Substances Act 1883 (making or possessing explosives under suspicious circumstances), so far as committed for the purposes of an act of terrorism.

CHAPTER 2: PUNISHMENT AND MANAGEMENT OF TERRORIST OFFENDERS

Section 7: Increase in maximum sentences

52. Section 7 increases to 15 years the maximum sentences for a number of offences in the Terrorism Act 2000 and Terrorism Act 2006, as follows:

- Section 58 Terrorism Act 2000 - Collecting, making a record of, possession of, or viewing by means of the internet, information likely to be useful to a person committing or preparing an act of terrorism (increased from 10 to 15 years);
- Section 58A Terrorism Act 2000 - Eliciting, publishing or communicating information about members of the armed forces, intelligence services or police, which is likely to be useful to a person committing or preparing an act of terrorism (increased from 10 to 15 years);
- Section 1 Terrorism Act 2006 - Encouragement of terrorism (increased from 7 to 15 years); and
- Section 2 Terrorism Act 2006 - Dissemination of terrorist publications (increased from 7 to 15 years).

Section 8: Sentences for offences with a terrorist connection

53. Section 30 of the Counter Terrorism Act 2008 requires that if a judge in England and Wales is sentencing for an offence specified at Schedule 2 to the 2008 Act, if it appears that there was or may have been a terrorist connection, then they must make a determination as to whether there was such a connection (section 31 makes equivalent provision for Scotland). If a determination is made that the offence has a terrorist connection, then that must be treated as an aggravating factor for the purpose of calculating the appropriate sentence.

54. Section 8(2) of the Act amends section 30 of the 2008 Act, so that the duty imposed on criminal courts in England and Wales is extended to criminal courts in Northern Ireland.

55. Following on from the extension of the 'offences with a terrorist connection' provisions to Northern Ireland, section 8(3) of the Act amends section 42 of the 2008 Act, so that a sentence for an offence with a terrorist connection in Northern Ireland is a trigger for the notification requirements in Part 4 of the 2008 Act (in the same way that such an offence already is in England, Wales and Scotland).

56. Section 8 of the Act (at subsections (5) and (6)) also adds a number of further offences to the list of specified offences at Schedule 2 to the 2008 Act (the offences in relation to which the requirement to consider a terrorist connection applies).

- a) wounding with intent (section 18 of the Offences Against the Person Act 1861)
- b) A number of common law offences under the law of Scotland, which are the equivalents of offences in the Offences Against the Person Act 1861 (which does not apply in Scotland):-
 - Assault by explosive device
 - Assault to severe injury
 - Assault and poisoning
 - Poisoning
- c) The common law offence, under the law of Northern Ireland, of false imprisonment.
- d) A number of statutory offences in Northern Ireland:-
 - Blackmail (section 20 of the Theft Act (Northern Ireland) 1969)
 - Intimidation (section 1 of the Protection of the Person and Property Act (Northern Ireland) 1969)
 - Putting People in Fear of Violence (Protection from Harassment (Northern Ireland) Order 1997)
 - A number of offences under the Firearms (Northern Ireland) Order 2004:-
 - Unauthorised possession etc of firearm (Article 3(1))
 - Unauthorised possession etc of ammunition (Article 3(2))
 - Possession of firearm with intent to endanger life etc (Article 58(1))
 - Possession of firearm with intent to cause person to believe that unlawful violence will be used etc (Article 58(2))
 - Carrying a firearm with criminal intent (Article 60)
 - Carrying or discharging a firearm in a public place (Article 61)
 - Possession of firearm or ammunition in suspicious circumstances (Article 64)

Section 9: Extended sentences etc for terrorism offences: England and Wales

57. Part 12 of the Criminal Justice Act 2003 provides for special types of sentence to be imposed by a criminal court in England and Wales, on offenders who have been convicted of certain specified offences. When certain conditions are met, an "Extended Determinate Sentence" (EDS) may be imposed. Otherwise, an offender who has been convicted of a specified offence and who is not awarded an EDS or a

life sentence, must be handed a “sentence for offenders of particular concern” (SOPC). Full details of these sentences are outside the scope of this Circular and are provided in the appropriate guidance. These provisions were originally aimed at violent and sexual offenders, and the schedules containing the specified offences for them (Schedule 15 for EDS; and Schedule 18A for SOPC) contained only a limited number of terrorism offences, those with a direct link to violence.

58. Section 9 creates a new Part 3 of Schedule 15, which specifies the terrorism offences in respect of which an EDS can be awarded. Existing Parts 1 and 2 contain violent and sexual offences respectively; section 9 also removes the terrorism offences previously in Part 1 and places them in new Part 3. Section 9 also adds a number of terrorism offences to Schedule 18A (in relation to SOPC). As a result, both schedules now contain the following terrorism offences:-

<i>Terrorism Act 2000</i>	
Section 11	Membership of a proscribed organisation
Section 12	Inviting support for a proscribed organisation
Section 54	Weapons training
Section 56	Directing a terrorist organisation
Section 57	Possession of article for terrorist purposes
Section 58	Collection of information likely to be of use to a terrorist
Section 58A	Publishing information about members of the armed forces etc
Section 58B	Entering or remaining in a designated area
Section 59	Inciting terrorism overseas
<i>Anti-terrorism, Crime and Security Act 2001</i>	
Section 47	Use etc of nuclear weapons
Section 50	Assisting or inducing certain weapons-related acts overseas
Section 113	Use of noxious substance or thing to cause harm or intimidate
<i>Terrorism Act 2006</i>	
Section 1	Encouragement of terrorism
Section 2	Dissemination of terrorist publications
Section 5	Preparation of terrorist acts
Section 6	Training for terrorism
Section 8	Attendance at a place used for terrorist training
Section 9	Making or possession of radioactive device or material
Section 10	Misuse of radioactive device or material for terrorist purposes etc
Section 11	Terrorist threats relating to radioactive devices etc

<i>Inchoate offences</i>
Aiding, abetting, counselling or procuring the commission of any of the above offences.
Attempting to commit any of the above offences.
Conspiracy to commit any of the above offences.
Incitement to commit any of the above offences.
An offence under Part 2 of the Serious Crime Act 2007, in relation to which any of the above offences is the offence (or one of the offences) which the person intended or believed would be committed.

Section 10: Extended sentences for terrorism offences: Scotland

59. Section 210A of the Criminal Procedure (Scotland) Act 1995 allows a criminal court in Scotland to impose an extended sentence on a sex or violent offender, when certain conditions are met. Similarly to extended sentences in England and Wales (see paragraphs 57 to 58 above; note that the Scottish provisions are not directly equivalent to those for the rest of the UK) this provision previously applied only to certain terrorism offences with a direct link to violence. Full details of this sentence are outside the scope of this Circular.

60. Section 10 of the Act amends section 210A of the 1995 Act so that an extended sentence of up to 10 years can be imposed on a terrorist offender, and it inserts a definition of terrorism which refers to the same offences as are listed in the table above above for the purpose of the Criminal Justice Act 2003 in England and Wales.

Section 11: Extended sentences for terrorism offences: Northern Ireland

61. Part 2 of the Criminal Justice (Northern Ireland) Order 2008 allows a criminal court in Northern Ireland to impose an “Extended Custodial Sentence” (ECS) on a sex or violent offender, if certain conditions are met. Similarly to extended sentences in England and Wales, and in Scotland (see paragraphs 57 to 60 above; note that the Northern Ireland provisions are not directly equivalent to those for the rest of the UK), this provision previously applied only to certain terrorism offences. Full details of this sentence are outside the scope of this Circular.

62. The specified offences for the ECS are listed at Schedule 2 to the 2008 Order. Section 11 of the Act creates a new Part 3 (specified terrorism offences) of Schedule 2, containing the same offences as are listed in the table above for the purpose of the Criminal Justice Act 2003 in England and Wales. Section 11 also removes the existing terrorism offences from Part 1 (specified violent offences) of Schedule 2 and places them in newly created Part 3. And Section 11 amends Articles 12 and 14 of the 2008 Order so that the ECS regime applies to the offences specified in new Part 3 of Schedule 2.

Section 12, Schedules 1 and 4: Additional notification requirements, travel notifications

63. Part 4 of the Counter-Terrorism Act 2008 requires certain individuals convicted of a relevant terrorism offence (one specified at section 41(1) of the 2008 Act) to

periodically notify certain information to the police. Full details of the notification scheme are outside of the scope of this Circular.

64. Section 12 and Schedule 1 to the Act expand the range of information that must be notified by 'registered terrorist offenders' (RTOs) under Part 4 of the 2008 Act. The additional information is:-

- a) The RTO's contact details (any telephone numbers or email addresses they use).

This information must be provided: on initial notification (including both their contact details at the time they were dealt with for the offence and at the time that they become subject to the notification requirements); on any subsequent notification; and within three days of any change in the RTO's contact details. A change will occur if the RTO starts to use new contact details or if they cease to use any contact details which they have notified.

- b) Identifying information of any motor vehicle of which the RTO is the registered keeper, or which they otherwise have the right to use (for example if they have hired or borrowed the vehicle or have access to it through their employment).

The information that must be notified is the registration number, model and colour of the vehicle, and the location where the vehicle is normally stored when not in use.

This information must be provided at every notification, and within three days of any changes. A change will occur if the RTO becomes or ceases to be the registered keeper of a vehicle, if they acquire or cease to have the right to use a vehicle, or if there is a change in the identifying information of a vehicle which they have previously notified (for example if the vehicle is repainted a different colour).

Whereas other changes of information under the Part 4 regime must be notified within 3 days, changes in relation to motor vehicles must be notified either within 3 days or before the first occasion on which the RTO uses the vehicle, whichever is sooner.

- c) Details of any financial account the RTO holds, is entitled to operate (for example through their employment or on behalf of a family member), or which is held by a company through which the RTO runs a business.

The information that must be notified is:-

- The name of the financial institution with which the account is held;
- The address of the office at which the account is held (and if this is outside the UK, the address of the principle office of that institution (if any) in the UK);

- The number of the account;
- The sort code of the account, if any;
- The card number of any payment card in relation to the account (a credit card, charge card, prepaid card or debit card); and
- The start date (if any) and expiry date of each such card.

This information must be provided on every notification, and any changes must be notified within three days. A change will occur if: an account previously notified is closed; a payment card previously notified

is no longer held by the person notified as holding it; a new account is opened or a new payment card obtained; or if any other financial information previously notified is altered or becomes inaccurate.

d) Details of any passports or identification documents the RTO holds.

The information that must be notified in relation to any passports is:-

- The number of the passport;
- The RTO's full name as it appears on the passport;
- The name of the country which issued the passport or on whose behalf it was issued (if it was issued by a country); and
- If the passport was issued by or on behalf of an international organisation, the name of that organisation.

If the RTO does not hold a passport but does hold one or more identity documents (see below), the information that must be notified in relation to any such document is:-

- A description of the identity document;
- The issue number (if any) of the identity document;
- The RTO's full name as it appears in the identity document;
- The name of the country which issued the identity document or on whose behalf it was issued (if it was issued by a country); or
- If the identity document was issued by or on behalf of an international organisation, the name of that organisation.

An identity document for these purposes is one that falls within the meaning of section 7 of the Identity Documents Act 2010, that is to say any document that is or purports to be:-

- An immigration document;
- A UK passport (within the meaning of the Immigration Act 1971);
- A passport issued by or on behalf of the authorities of a country or territory outside the UK or by or on behalf of an international organisation;
- A document that can be used (in some or all circumstances) instead of a passport;
- A licence to drive a motor vehicle granted under Part 3 of the Road Traffic 1988 or under Part 2 of the Road Traffic (Northern Ireland) Order 1981; or

- A driving licence issued by or on behalf of the authorities of a country or territory outside the UK.

In this list “immigration document” means:-

- A document used for confirming the right of a person under the EU Treaties in respect of entry or residence in the UK;
- A document that is given in exercise of immigration functions (under the Immigration Acts) and records information about leave granted to a person to enter or to remain in the UK; or
- A registration card (within the meaning of section 26A of the Immigration Act 1971).

This information must be provided on every notification, and any changes must be notified within three days. A change will occur if the RTO obtains a passport or other identity document, or if they cease to hold one which they have previously notified.

65. When an RTO is required to notify a change relating to financial information or identity documents, as a result of new section 48A(8) of the 2008 Act (as inserted by section 12(4) of the Act) they must at the same time re-notify all the information specified at section 47(2) of the 2008 Act, which is the information required on initial notification. This is in the same way that an RTO is already required to renotify that information when notifying a change in any other information, under section 48.

66. An RTO must re-notify the police of their information on an annual basis, and within three days of any changes (save for information about motor vehicles as set out above). Section 12(5) of the Act makes additional provision in relation to RTOs who are homeless (who have “no sole or main residence in the UK”, and must therefore notify where they may usually be found). Such RTOs must re-notify on a weekly, rather than an annual basis.

67. The Act makes two further changes in relation to the travel notification requirements on RTOs. These requirements are set out in the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009 and are amended by paragraph 51 of Schedule 4 to the Act.

68. Firstly, whereas RTOs have previously been required to notify certain details (set out at regulation 3 of the 2009 Regulations) of any intended travel outside the UK for a period of three days or more, they are now required to notify the police of any intended travel for any period.

69. Under the 2009 Regulations, in a case where an RTO knows any of the required information about their intended travel more than seven days before the date of their intended departure, then they are required to notify that information at least seven days before that date. If any of the information is incomplete or is not known at that point, or subsequently becomes inaccurate, then previously they have been required to notify the remaining or corrected information not less than 24 hours before their intended date of departure. This recognises that some of the required information specified at regulation 3 is not reasonably likely to be known to a person planning to travel until nearer to their date of departure than seven days. The Act amends this

period from 24 to 12 hours, as a consequence of the new requirement to notify of any period of intended travel.

Section 13: Power to enter and search home

70. Section 13 of the Act inserts new section 56A into the Counter-Terrorism Act 2008. This provides a power for the police to enter and search the home address of a RTO, for the purpose of assessing the risk they may pose, and it authorises the use of reasonable force to do so. The power may only be exercised with a warrant issued by a justice of the peace in England and Wales (or a sheriff in Scotland, or a magistrate in Northern Ireland), on application from a senior police officer (of superintendent rank or above). The warrant may authorise entry to and search of premises on more than one occasion if necessary to achieve its purpose and may specify either a finite or an unlimited number of such occasions.

71. There are certain conditions attached to the grant of such a warrant. A constable must have attempted and failed to gain entry to the premises on at least two previous occasions for the purpose of a risk assessment. The justice must be satisfied that it is necessary to grant the warrant for that purpose. The address must either be the address that was last notified by the RTO as their home address, or must be an address where there are reasonable grounds to believe that the RTO resides or may regularly be found. And the RTO must not be in custody, detained in a hospital, or outside the UK.

Section 14: Serious crime prevention orders

72. Under the Serious Crime Act 2007 a court may make a Serious Crime Prevention Order (SCPO) when it is sentencing a person who has been convicted of a 'serious offence', or on application where it is satisfied that a person has been involved in 'serious crime', and where it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting further involvement by the subject of the order in serious crime. An SCPO may impose such prohibitions, restrictions or requirements on its subject as the court considers necessary for that purpose. Full details of the SCPO regime are outside the scope of this Circular.

73. Schedule 1 to the 2007 Act contains the list of specified 'serious offences' in respect of which an SCPO may be made. This list has not previously included any terrorism offences. Section 14 of the Act amends Schedule 1 by adding to the lists of specified offences for England and Wales, Scotland and Northern Ireland, an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008 (this is the list of offences which trigger the terrorism notification requirements). As a result of this, it will now be possible to apply for an SCPO against a person who is being sentenced for one of these terrorism offences.