

2011 No. 631

PREVENTION AND SUPPRESSION OF TERRORISM

Terrorism Act 2000 (Remedial) Order 2011

Made - - - - *****

Laid before Parliament *****

Coming into force - - *****

It appears to the Secretary of State, following a finding of the European Court of Human Rights(a) after the coming into force of section 10 of the Human Rights Act 1998(b) in proceedings against the United Kingdom, that certain provisions of the Terrorism Act 2000(c) are incompatible with an obligation of the United Kingdom arising from the Convention(d).

The Secretary of State considers that there are compelling reasons for proceeding by way of a remedial order(e) to make such amendments to the Terrorism Act 2000 as the Secretary of State considers necessary to remove the incompatibility.

It appears to the Secretary of State that, because of the urgency of the matter, it is necessary to make this Order without a draft being approved by resolution of each House of Parliament(f).

Accordingly, the Secretary of State makes the following Order in exercise of the powers conferred by section 10(2) of, and paragraph 1(1) of Schedule 2 to, the Human Rights Act 1998:

Citation and commencement

1. This Order may be cited as the Terrorism Act 2000 (Remedial) Order 2011 and shall come into force on 18th March 2011.

Current stop and search powers no longer to have effect

2. The Terrorism Act 2000 is to have effect as if sections 44 to 47(g) of that Act (power to stop and search) were repealed.

(a) *Gillan and Quinton v the United Kingdom* (Application no. 4158/05), judgment became final on 28th June 2010.
(b) 1998 c.42.
(c) 2000 c.11.
(d) See section 21(1) of the Human Rights Act 1998 for the meaning of “the Convention”.
(e) See section 21(1) of the Human Rights Act 1998 for the meaning of “remedial order”.
(f) This declaration is made pursuant to paragraph 2(b) of Schedule 2 to the Human Rights Act 1998.
(g) Section 44 of the Terrorism Act 2000 was amended by section 78(2)(c) of the Police (Northern Ireland) Act 2000 (c.32), section 30(1), (2) and (3) of the Terrorism Act 2006 (c.11), section 101 of and paragraphs 29 and 31 of Schedule 7 to the Anti-Terrorism, Crime and Security Act 2001 (c. 24), article 12(6)(c) of S.I. 2004/1573, section 57(1) and (2) and section 197(9) of and Part 1 of Schedule 23 to the Energy Act 2004 (c. 20); section 45 of the Terrorism Act 2000 was amended by section 30(1) and (4) of the Terrorism Act 2006; and section 46 of the Terrorism Act 2000 was amended by section 57(1) and (3) of the Energy Act 2004.

Replacement powers to stop and search in specified locations

3.—(1) The Terrorism Act 2000 is to have effect as if before section 48 (and the italic cross-heading before it) there were inserted—

“47A Searches in specified areas or places

(1) A senior police officer may give an authorisation under subsection (2) or (3) in relation to a specified area or place if the officer—

- (a) reasonably suspects that an act of terrorism will take place; and
- (b) considers that—
 - (i) the authorisation is necessary to prevent such an act;
 - (ii) the specified area or place is no greater than is necessary to prevent such an act; and
 - (iii) the duration of the authorisation is no longer than is necessary to prevent such an act.

(2) An authorisation under this subsection authorises any constable in uniform to stop a vehicle in the specified area or place and to search—

- (a) the vehicle;
- (b) the driver of the vehicle;
- (c) a passenger in the vehicle;
- (d) anything in or on the vehicle or carried by the driver or a passenger.

(3) An authorisation under this subsection authorises any constable in uniform to stop a pedestrian in the specified area or place and to search—

- (a) the pedestrian;
- (b) anything carried by the pedestrian.

(4) A constable in uniform may exercise the power conferred by an authorisation under subsection (2) or (3) only for the purpose of discovering whether there is anything which may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b).

(5) But the power conferred by such an authorisation may be exercised whether or not the constable reasonably suspects that there is such evidence.

(6) A constable may seize and retain anything which the constable—

- (a) discovers in the course of a search under such an authorisation; and
- (b) reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b).

(7) Schedule 6B (which makes supplementary provision about authorisations under this section) has effect.

(8) In this section—

“driver”, in relation to an aircraft, hovercraft or vessel, means the captain, pilot or other person with control of the aircraft, hovercraft or vessel or any member of its crew and, in relation to a train, includes any member of its crew;

“senior police officer” has the same meaning as in Schedule 6B (see paragraph 14(1) and (2) of that Schedule);

“specified” means specified in an authorisation.”

(2) Schedule 1 (which provides for the Terrorism Act 2000 to have effect as if a new Schedule making supplementary provision about powers to stop and search in specified locations were inserted after Schedule 6A to that Act) has effect.

Code of Practice

4. The Terrorism Act 2000 is to have effect as if after section 47A (for which see article 3) there were inserted—

“47B Code of practice relating to section 47A

- (1) The Secretary of State must issue a code of practice containing guidance about—
 - (a) the exercise of the powers to give an authorisation under section 47A(2) or (3),
 - (b) the exercise of the powers conferred by such an authorisation and section 47A(6), and
 - (c) such other matters in connection with the exercise of any of the powers mentioned in paragraphs (a) and (b) as the Secretary of State considers appropriate.
- (2) Such a code may make different provision for different purposes.
- (3) In the course of preparing such a code, the Secretary of State must, so far as is practicable, consult the Lord Advocate and such other persons as the Secretary of State considers appropriate.
- (4) The requirement to consult in subsection (3), in relation to the preparation of a code of practice, may be satisfied by any such consultation which takes place before the day on which the Terrorism Act 2000 (Remedial) Order 2011 (S.I. 2011/631) comes into force.
- (5) The Secretary of State must lay before Parliament a copy of a code of practice issued under subsection (1).
- (6) The Secretary of State may revise such a code and must issue any such revised code.
- (7) Subsections (2), (3), (5) and (6) have effect in relation to a revised code as they have effect in relation to the code first issued.

47C Effect of code

- (1) A constable must have regard to the search powers code when exercising any powers to which the code relates.
- (2) A failure on the part of a constable to act in accordance with any provision of the search powers code does not of itself make that person liable to criminal or civil proceedings.
- (3) The search powers code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a constable to have regard to the search powers code in determining a question in any such proceedings.
- (5) The references in this section to a constable include, in relation to any functions exercisable by a person by virtue of paragraph 15 of Schedule 4 to the Police Reform Act 2002^(a) or paragraph 16 of Schedule 2A to the Police (Northern Ireland) Act 2003^(b) (search powers in specified areas or places for community support officers), references to that person.
- (6) In this section “the search powers code” means the code of practice issued under section 47B(1) (as revised from time to time).”

Consequential amendments

5. Schedule 2 (which provides for various enactments to have effect as if certain consequential amendments were made) has effect.

(a) 2002 c.30.

(b) 2003 c.6. Schedule 2A was inserted by SI 2007/912.

Temporary effect of Order and transitional provision

6.—(1) If a public general Act passed in the same Session as the Session in which this Order is made makes provision to repeal sections 44 to 47 of the Terrorism Act 2000 (with or without savings), articles 2 to 5 and Schedules 1 and 2 cease to have effect on the coming into force of such provision.

(2) Paragraph (1) is subject to any transitional, transitory or saving provision made by virtue of the Act so passed.

(3) An authorisation—

(a) given under section 44 of the Terrorism Act 2000, and

(b) whose duration would otherwise extend beyond the coming into force of this Order, ceases to have effect on the coming into force of this Order.

(4) An authorisation ceasing to have effect by virtue of paragraph (3) does not affect the lawfulness of anything done in reliance on it before it ceases to have effect.

Home Office

One of Her Majesty's Principal Secretaries of State

SCHEDULE 1

Article 3(2)

Replacement powers to stop and search: supplementary provisions

The Terrorism Act 2000 is to have effect as if after Schedule 6A there were inserted—

“SCHEDULE 6B

Searches in specified areas or places: supplementary

Extent of search powers: supplementary

1. A constable exercising the power conferred by an authorisation under section 47A may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

2.—(1) Sub-paragraph (2) applies if a constable proposes to search a person or vehicle by virtue of section 47A(2) or (3).

(2) The constable may detain the person or vehicle for such time as is reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped.

Requirements as to writing

3. A senior police officer who gives an authorisation under section 47A orally must confirm it in writing as soon as reasonably practicable.

4.—(1) Where—

- (a) a vehicle or pedestrian is stopped by virtue of section 47A(2) or (3), and
- (b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that the pedestrian was stopped, by virtue of section 47A(2) or (as the case may be) (3),

the written statement must be provided.

(2) An application under sub-paragraph (1) must be made within the period of 12 months beginning with the date on which the vehicle or pedestrian was stopped.

Duration of authorisations

5.—(1) An authorisation under section 47A has effect during the period—

- (a) beginning at the time when the authorisation is given, and
- (b) ending with the specified date or at the specified time.

(2) This paragraph is subject as follows.

6. The specified date or time must not occur after the end of the period of 14 days beginning with the day on which the authorisation is given.

7.—(1) The senior police officer who gives an authorisation must inform the Secretary of State of it as soon as reasonably practicable.

(2) An authorisation ceases to have effect at the end of the period of 48 hours beginning with the time when it is given unless it is confirmed by the Secretary of State before the end of that period.

(3) An authorisation ceasing to have effect by virtue of sub-paragraph (2) does not affect the lawfulness of anything done in reliance on it before the end of the period concerned.

- (4) When confirming an authorisation, the Secretary of State may—
- (a) substitute an earlier date or time for the specified date or time;
 - (b) substitute a more restricted area or place for the specified area or place.

8. The Secretary of State may cancel an authorisation with effect from a time identified by the Secretary of State.

- 9.**—(1) A senior police officer may—
- (a) cancel an authorisation with effect from a time identified by the officer concerned;
 - (b) substitute an earlier date or time for the specified date or time;
 - (c) substitute a more restricted area or place for the specified area or place.

(2) Any such cancellation or substitution in relation to an authorisation confirmed by the Secretary of State under paragraph 7 does not require confirmation by the Secretary of State.

10. An authorisation given by a member of the Civil Nuclear Constabulary does not have effect except in relation to times when the specified area or place is a place where members of that Constabulary have the powers and privileges of a constable.

11. The existence, expiry or cancellation of an authorisation does not prevent the giving of a new authorisation.

Specified areas or places

12.—(1) An authorisation given by a senior police officer who is not a member of the British Transport Police Force, the Ministry of Defence Police or the Civil Nuclear Constabulary may specify an area or place together with—

- (a) the internal waters adjacent to that area or place; or
- (b) a specified area of those internal waters.

(2) In sub-paragraph (1) “internal waters” means waters in the United Kingdom that are not comprised in any police area.

13. Where an authorisation specifies more than one area or place—

- (a) the power of a senior police officer under paragraph 5(1)(b) to specify a date or time includes a power to specify different dates or times for different areas or places (and the other references in this Schedule to the specified date or time are to be read accordingly), and
- (b) the power of the Secretary of State under paragraph 7(4)(b), and of a senior police officer under paragraph 9(1)(c), includes a power to remove areas or places from the authorisation.

Interpretation

14.—(1) In this Schedule—

“driver” has the meaning given by section 47A(8);

“senior police officer” means—

- (a) in relation to an authorisation where the specified area or place is the whole or part of a police area outside Northern Ireland, other than of a police area mentioned in paragraph (b) or (c), a police officer for the area who is of at least the rank of assistant chief constable;
- (b) in relation to an authorisation where the specified area or place is the whole or part of the metropolitan police district, a police officer for the district who is of at least the rank of commander of the metropolitan police;
- (c) in relation to an authorisation where the specified area or place is the whole or part of the City of London, a police officer for the City who is of at least the rank of commander in the City of London police force;

- (d) in relation to an authorisation where the specified area or place is the whole or part of Northern Ireland, a member of the Police Service of Northern Ireland who is of at least the rank of assistant chief constable;

“specified” means specified in an authorisation.

(2) References in this Schedule to a senior police officer are to be read as including—

- (a) in relation to an authorisation where the specified area or place is the whole or part of a police area outside Northern Ireland and is in a place described in section 34(1A), a member of the British Transport Police Force who is of at least the rank of assistant chief constable;
- (b) in relation to an authorisation where the specified area or place is a place to which section 2(2) of the Ministry of Defence Police Act 1987^(a) applies, a member of the Ministry of Defence Police who is of at least the rank of assistant chief constable;
- (c) in relation to an authorisation where the specified area or place is a place in which members of the Civil Nuclear Constabulary have the powers and privileges of a constable, a member of that Constabulary who is of at least the rank of assistant chief constable;

but such references are not to be read as including a member of the British Transport Police Force, the Ministry of Defence Police or the Civil Nuclear Constabulary in any other case.”

^(a) 1987 c.4. Section 2(2) was amended by section 98(1) and (2) and section 125 of and Part 6 of Schedule 8 to the Anti-terrorism, Crime and Security Act 2001 (c.24).

SCHEDULE 2

Article 5

Consequential amendments

Police and Criminal Evidence Act 1984

1. The Police and Criminal Evidence Act 1984(a) is to have effect as if after section 66(2) (codes of practice in relation to statutory search powers etc.) there were inserted—

“(3) Nothing in this section requires the Secretary of State to issue a code of practice in relation to any matter falling within the code of practice issued under section 47B(1) of the Terrorism Act 2000 (as that code is revised from time to time) (code of practice in relation to terrorism powers to stop and search in specified locations).”

PACE Code A

2. The code of practice issued under section 66 of the Police and Criminal Evidence Act 1984(b) known as Code A is to have effect as if paragraphs 2.18 to 2.26(c) of the code were revoked.

Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

3. Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (codes of practice in relation to statutory search powers etc.) is to have effect as if—

- (a) the existing provisions were to become paragraph (1), and
- (b) after that paragraph there were inserted—

“(2) Nothing in this Article requires the issuing of a code of practice in relation to any matter falling within the code of practice issued under section 47B(1) of the Terrorism Act 2000 (as that code is revised from time to time) (code of practice in relation to terrorism powers to stop and search in specified locations).”

Regulation of Investigatory Powers Act 2000

4. Paragraph 6(3) of Schedule 2 to the Regulation of Investigatory Powers Act 2000(d) (general requirements relating to the appropriate permission) is to have effect as if—

- (a) in paragraph (a) for “section 44” there were substituted “section 47A”,
- (b) in paragraph (b)—
 - (i) at the beginning there were inserted “section 44 of the Terrorism Act 2000 or”, and
 - (ii) for “of section 44” there were substituted “of section 47A”, and
- (c) after “mentioned in” there were inserted “paragraph 14(1) and (2) of Schedule 6B to that Act of 2000 (see the definition of “senior police officer”).”

Police Reform Act 2002

5. Paragraph 15(1) of Schedule 4 to the Police Reform Act 2002 (powers of stop and search for community support officers) is to have effect as if—

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- (a) 1984 c.60. Section 66(1)(a)(i) was amended by section 57(1) and (4) of the Criminal Justice and Courts Services Act 2000 (c. 43) and sections 110(3)(a) and 174(2) of and Part 2 of Schedule 17 to the Serious Organised Crime and Police Act 2005 (c. 15).
 - (b) 1984 c.60. Section 66(1)(a)(i) was amended by section 57(1) and (4) of the Criminal Justice and Courts Services Act 2000 (c. 43) and sections 110(3)(a) and 174(2) of and Part 2 of Schedule 17 to the Serious Organised Crime and Police Act 2005 (c. 15).
 - (c) Those paragraphs were inserted or amended by S.I. 2011/412.
 - (d) 2000 c.23.

- (a) in paragraph (a)—
 - (i) for “section 44(1)(a) and (d) and (2)(b) and 45(2)” there were substituted “section 47A(2)(a) and (d), (3)(b) and (6)”,
 - (ii) in sub-paragraph (iv) for “any article” there were substituted “anything which is”, and
 - (iii) also in sub-paragraph (iv), for “section 44(1) or (2) of that Act” there were substituted “section 47A(2) or (3) of that Act and which he reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b) of that Act”, and
- (b) in paragraph (b) for “subsections (1) and (4) of section 45 of” there were substituted “subsections (4) and (5) of section 47A of, and paragraphs 1 and 2 of Schedule 6B to,”.

Police (Northern Ireland) Act 2003

6. Paragraph 16 of Schedule 2A to the Police (Northern Ireland) Act 2003 (powers of stop and search for community support officers) is to have effect as if—

- (a) in sub-paragraph (1)—
 - (i) for “sections 44(1)(a) and (d) and (2)(b) and 45(2)” there were substituted “section 47A(2)(a) and (d), (3)(b) and (6)”,
 - (ii) in paragraph (d) for “any article” there were substituted “anything which is”, and
 - (iii) also in paragraph (d), for “section 44(1) or (2) of that Act” there were substituted “section 47A(2) or (3) of that Act and which he reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b) of that Act”, and
- (b) in sub-paragraph (2) for “subsections (1) and (4) of section 45 of” there were substituted “subsections (4) and (5) of section 47A of, and paragraphs 1 and 2 of Schedule 6B to,”.

EXPLANATORY NOTE

(This note is not part of the Order)

In the case of *Gillan and Quinton v United Kingdom* (Application no.4158/05) the European Court of Human Rights found that there had been a violation of article 8 of the Convention on the grounds that the powers of authorisation and confirmation as well as the powers of stop and search under sections 44 to 47 of the Terrorism Act 2000 (“the 2000 Act”) are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.

This Order modifies the effect of the 2000 Act by making a number of non-textual amendments. In particular, to remove the incompatibility of sections 44 to 47 of the 2000 Act with the Convention right, article 2 of the Order provides that the 2000 Act is to have effect as if the stop and search powers in sections 44 to 47 of that Act were repealed.

Article 3 of and Schedule 1 to the Order modify the 2000 Act so that it has effect as if new sections 47A to 47C and Schedule 6B were inserted into that Act. Those provisions provide the police with replacement powers of stop and search for the purposes of counter-terrorism. If a senior officer reasonably suspects that an act of terrorism will take place and considers that the stop and search powers are necessary to prevent such an act of terrorism, the senior officer may authorise the use of those powers in an area within the officer’s police force area no larger than necessary and for a period no longer than necessary for that purpose (and for a maximum of 14 days). Authorisations must be confirmed by the Secretary of State within 48 hours if they are to last beyond that period and the Secretary of State has the power to restrict the scope of authorisations. Where an authorisation is in place, an officer in uniform may stop and search a person or a vehicle to search for evidence that the person is a terrorist or that the vehicle is being used for purposes of terrorism, whether or not the officer reasonably suspects that such evidence will be present.

Article 4 of the Order requires the Secretary of State to issue a code of practice in connection with the exercise of the new powers.

Article 5 of and Schedule 2 to the Order make various non-textual consequential amendments to other enactments, including the Police Reform Act 2002 and the Police (Northern Ireland) Act 2003, which make provision for community support officers to have limited powers under the new stop and search powers.

The Order is made pursuant to the “urgency” procedure prescribed in paragraph 2(b) and 4 of Schedule 2 to the Human Rights Act 1998 and comes into force on 18th March 2011. The Order will cease to have effect if, at the end of the period of 120 days beginning with the day on which the Order was made (not including any time during which Parliament is dissolved or prorogued, or both Houses are adjourned for more than four days), a resolution has not been passed by each House of Parliament approving the Order.

Article 6 of the Order provides for articles 2 to 5 of and Schedules 1 and 2 to the Order to cease to have effect if an Act that is passed in the same Session as that in which this Order is passed makes provision to repeal sections 44 to 47 of the 2000 Act. In that case, those provisions of the Order will cease to have effect on the coming into force of such provision. The Protection of Freedoms Bill contains similar provisions to those in the Order relating to powers of stop and search under the 2000 Act. In particular, the Bill includes provision to repeal sections 44 to 47 of the 2000 Act.

Article 6 also provides that any authorisation given under section 44 of the 2000 Act whose duration would otherwise extend beyond the coming into force of the Order ceases to have effect on the coming into force of the Order (that is, on 18th March 2011).