

**Draft Detention of Terrorist Suspects
(Temporary Extension) Bills**



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(Temporary Extension) Bills**

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

February 2011

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Draft Detention of Terrorist Suspects (Temporary Extension) Bills

1. On 26 January 2011, the Secretary of State for the Home Department announced the conclusions of her review into counter-terrorism and security powers.

2. The review concluded that the maximum period of pre-charge detention for terrorist suspects should be 14 days and that this limit should be reflected on the face of the primary legislation. In line with the recommendations of the review, it is intended to repeal the order-making provisions of the Terrorism Act 2006 which allow the maximum period of pre-charge detention under Schedule 8 to the Terrorism Act, to be set at 28 days. The clauses dealing with this repeal are contained in the Protection of Freedoms Bill, published today.

3. The review found that there may be urgent situations where more than 14 days pre-charge detention is considered necessary. The Secretary of State for the Home Department set out in her statement to the House on 26 January that such situations would be catered for by the use of emergency legislation. These two draft bills are therefore published today, both of which would have the effect of extending the maximum period of pre-charge detention to 28 days, should they be introduced and Parliament approve. One bill could be used immediately while the order-making provisions of the 2006 Act are still in force and the other once those provisions have been repealed.

4. Both draft bills will be subject to pre-legislative scrutiny.

Office for Security and Counter Terrorism, February 2011

Detention of Terrorist Suspects (Temporary Extension) Bill

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- 1 Temporary extension of maximum detention period for terrorist suspects
- 2 Short title, commencement and extent

DRAFT OF

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B I L L

TO

Provide for the temporary extension of the maximum detention period for terrorist suspects.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Temporary extension of maximum detention period for terrorist suspects

- (1) Section 25 of the Terrorism Act 2006 (which reduces the maximum detention period for terrorist suspects from 28 days to 14 days for any time to which the section applies) does not apply to any time within the period of 3 months beginning with the time at which this Act is passed. 5
- (2) Subject to subsection (3), subsection (1) applies to any person who is being detained under section 41 of the Terrorism Act 2000 at the time this Act is passed (as well as any person who is subsequently detained under that section).
- (3) A further extension which was granted in relation to a person by virtue of paragraph 36 of Schedule 8 to the Act of 2000 before the time at which this Act is passed and is unexpired at that time continues to have effect for the period for which it was granted but this is without prejudice to the power to grant a further extension in relation to the person by virtue of subsection (1). 10
- (4) Subsection (5) applies if, on or after the end of the 3 month period mentioned in subsection (1)— 15
 - (a) a person is being detained by virtue of a further extension under paragraph 36 of Schedule 8 to the Act of 2000,
 - (b) the person's further detention was authorised (before the end of the 3 month period) for a period ending more than 14 days after the relevant time (within the meaning given by paragraph 36(3B) of that Schedule to that Act), 20
 - (c) that 14 days has expired, and
 - (d) the person's detention is not otherwise authorised by law.

- (5) The person with custody of that individual must release the individual immediately.
- (6) Subsections (4) and (5) apply instead of section 25(5) of the Act of 2006 in relation to the coming to an end of the disapplication in subsection (1) above.

2 Short title, commencement and extent

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- (1) This Act may be cited as the Detention of Terrorist Suspects (Temporary Extension) Act 2011.
- (2) This Act comes into force at the time this Act is passed.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.

Draft Detention of Terrorist Suspects (Temporary Extension) Bill

Explanatory Notes

SUMMARY

Pre-Charge Detention of Terrorist Suspects

The detention of Terrorist Suspects (Temporary Extension) Bill, makes provision for the maximum period of detention for terrorist suspects under Schedule 8 to the Terrorism Act 2000 to be increased from 14 days to 28 days, by “disapplying” section 25 of the Terrorism Act 2006 (which provides for the maximum period of pre-charge detention to be 14 days for any period during which section 25 applies – and when that section is disappplied, the maximum period is 28 days).

BACKGROUND

On 26 January 2011, the Secretary of State for the Home Department announced that the maximum period of detention without charge for terrorist suspects would be reduced from 28 days to 14 days, but that draft primary legislation would be produced, for introduction if and when required, which would enable Parliament to increase the maximum period to 28 days.

COMMENTARY ON CLAUSES

Clause j805: Temporary extension of maximum detention period for terrorist suspects

Clause 1(1) provides that section 25 of the Terrorism Act 2006 does not apply for a period of 3 months after the time the Bill receives Royal Assent. Section 25 of the 2006 Act provides that the 28 day maximum period of detention for terrorist suspects reduces to 14 days at any time when the section applies. By “disapplying” section 25 of the 2006 Act for a period of 3 months, this clause therefore has the effect that the maximum period of detention for terrorist suspects under Schedule 8 to the Terrorism Act 2000, is 28 days for that period. The period runs from the time of Royal Assent (rather than from the beginning of the day on which the Bill receives Royal Assent which is a more usual provision) in order to ensure there is no element of retrospectivity.

Clause 1(2) provides that the 28 day maximum period applies to persons being detained under Schedule 8 to the 2000 Act at the time the Bill is passed – as well as to any person so detained after that time.

Clause 1(3) provides that any unexpired extension to a warrant of further detention granted under paragraph 36 of Schedule 8 to the 2000 Act, remains valid after commencement of the Act, but also further extensions to that warrant (up to the maximum of 28 days) may be made (following an application to the relevant judicial authority or judge).

Clauses 1(4), (5) and (6) provide that a person who has been in detention under Schedule 8 to the 2000 Act for longer than 14 days when the 3 months mentioned in clause 1(1) expires, must be released immediately unless they are otherwise lawfully detained.

Detention of Terrorist Suspects (Temporary Extension) Bill

CONTENTS

- 1 Temporary extension of maximum detention period for terrorist suspects
- 2 Duration of section 1
- 3 Short title, commencement and extent

DRAFT OF

A

B I L L

TO

Make temporary provision extending the maximum detention period for terrorist suspects.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Temporary extension of maximum detention period for terrorist suspects

(1) Part 3 of Schedule 8 to the Terrorism Act 2000 (extension of detention of terrorist suspects) is to have effect as if—

- (a) in paragraph 36(3)(b)(ii) for “14 days” there were substituted “28 days”,
and
- (b) the other modifications in subsections (2) and (3) were made.

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(2) The other modifications of paragraph 36 of that Schedule to that Act are—

- (a) the substitution, for “a judicial authority” in sub-paragraph (1A), of “—
 - (a) in the case of an application falling within sub-paragraph (1B), a judicial authority; and
 - (b) in any other case, a senior judge”,
- (b) the insertion, after sub-paragraph (1A), of—

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“(1B) An application for the extension or further extension of a period falls within this sub-paragraph if—

- (a) the grant of the application otherwise than in accordance with sub-paragraph (3AA)(b) would extend that period to a time that is no more than 14 days after the relevant time; and
- (b) no application has previously been made to a senior judge in respect of that period.”,

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- (c) the insertion, after “judicial authority” in both places in sub-paragraph (3AA) where it appears, of “or senior judge”,
- (d) the insertion, after “detention” in sub-paragraph (4), of “but, in relation to an application made by virtue of sub-paragraph (1A)(b) to a senior

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- judge, as if—
- (a) references to a judicial authority were references to a senior judge; and
 - (b) references to the judicial authority in question were references to the senior judge in question”, 5
 - (e) the insertion, after “judicial authority” in sub-paragraph (5), of “or senior judge”, and
 - (f) the insertion, after sub-paragraph (6), of—
 - “(7) In this paragraph and paragraph 37 “senior judge” means a judge of the High Court or of the High Court of Justiciary.” 10
- (3) The modification of paragraph 37 of that Schedule to that Act is the insertion, in sub-paragraph (2), after “judicial authority”, of “or senior judge”.
- (4) Subject to subsection (5), the modifications made by this section apply to any person who is being detained under section 41 of the Act of 2000 when this section comes into force (as well as any person who is subsequently detained under that section). 15
- (5) A further extension which was granted in relation to a person by virtue of paragraph 36 of Schedule 8 to the Act of 2000 before the coming into force of this section and is unexpired on the coming into force of this section continues to have effect for the period for which it was granted but this is without prejudice to the power to grant a further extension in relation to the person in accordance with the modifications made by this section. 20
- (6) This section is subject to section 2 (duration of this section).
- 2 Duration of section 1**
- (1) Subsections (2) to (4) come into force at the end of the period of 3 months beginning with the day on which this Act is passed. 25
- (2) Section 1 is repealed.
- (3) Subsection (4) applies if, when section 1 is repealed—
- (a) a person is being detained by virtue of a further extension under paragraph 36 of Schedule 8 to the Act of 2000, 30
 - (b) the person’s further detention was authorised (before the repeal of section 1) for a period ending more than 14 days after the relevant time (within the meaning given by paragraph 36(3B) of that Schedule to that Act),
 - (c) that 14 days has expired, and 35
 - (d) the person’s detention is not otherwise authorised by law.
- (4) The person with custody of that individual must release the individual immediately.
- 3 Short title, commencement and extent**
- (1) This Act may be cited as the Detention of Terrorist Suspects (Temporary Extension) Act 2011. 40
- (2) This Act (apart from section 2(2) to (4)) comes into force at the time this Act is passed.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.

Draft Detention of Terrorist Suspects (Temporary Extension) Bill

Explanatory Notes

SUMMARY

Pre-Charge Detention of Terrorist Suspects

The detention of Terrorist Suspects (Temporary Extension) Bill, makes provision for the maximum period of detention for terrorist suspects under Schedule 8 to the Terrorism Act 2000 to be increased from 14 days to 28 days for a period of 3 months, and makes provision for a requirement that applications for detention beyond 14 days to be approved by a senior judge.

BACKGROUND

On 26 January 2011, the Secretary of State for the Home Department announced that the maximum period of detention without charge for terrorist suspects would be reduced from 28 days to 14 days, but that draft primary legislation would be produced, for introduction if and when required, which would enable Parliament to increase the maximum period to 28 days.

COMMENTARY ON CLAUSES

Clause j805: Temporary extension of maximum detention period for terrorist suspects

Clause 1(1) provides for the maximum period of pre-charge detention of terrorist suspects under Schedule 8 to the Terrorism Act 2000 to increase from 14 to 28 days. This only applies for a 3 month period, while the provision is in force (see clause 2).

Clause 1(2) provides for changes in the process of granting extensions to warrants of further detention under Paragraph 36 of Schedule 8 to the 2000 Act for extensions of detention beyond 14 days. Where an application is made for an extension which would extend the total period of an individual's detention to less than 14 days after arrest, the provisions provide for that application to be made to a "judicial authority", as defined in paragraph 29(4) of Schedule 8. Where such an extension would extend the total detention to 14 days or more, the application must be made to a "senior judge", which is defined in a new paragraph 36(7) as a judge of the High Court or of the High Court of Judiciary.

Clause 1(4) provides that the 28 day maximum period of detention is available in respect of an person who is detained under Schedule 8 to the 2000 Act at the time the Bill is passed (as well as to persons so detained after that time).

Clause 1(5) provides that any unexpired extension to a warrant of further detention granted under paragraph 36 of Schedule 8 to the 2000 Act, remains valid after commencement of the Bill, but

also further extensions to that warrant (up to the maximum of 28 days) may be made (following an application to the relevant judicial authority or judge).

Clause j803: Duration of clause 1

Clause 2 provides for clause 1 of the Bill to be repealed 3 months after the day of Royal Assent, with the effect that the maximum period of pre-charge detention reduces from 28 to 14 days again 3 months after the Bill is passed. Clause 2 also provides that a person who has been in detention under Schedule 8 to the 2000 Act for longer than 14 days when clause 1 is repealed, must be released unless they are otherwise lawfully detained.

Clause j802: Short title, commencement and extent

This commences on Royal Assent (rather than from the beginning of the day on which the Bill receives Royal Assent which is a more usual provision) in order to ensure there is no element of retrospectivity.



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