

*These notes refer to the Lords Amendments to the Counter-Terrorism and Security Bill,
as brought from the House of Lords on 9 February 2015 [Bill 171]*

COUNTER-TERRORISM AND SECURITY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These Explanatory Notes relate to the Lords amendments to the Counter-Terrorism and Security Bill, as brought from the House of Lords on 9 February 2015. The Notes have been prepared by the Home Office in order to assist the reader of the Bill and the Lords Amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These Notes, like the Lords Amendments themselves, refer to HL Bill 75, the Bill as first printed for the Lords.
3. These Notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. Lords Amendments 1 to 39 were all tabled in the name of the Minister.

COMMENTARY ON LORDS AMENDMENTS

Part 1 Chapter 1: Powers to seize travel documents

5. Lords Amendments 1 and 2 would provide that civil legal aid may be made available for hearings of applications, under paragraph 8 of Schedule 1, to extend the 14 day time period in which an individual's travel documents may be retained in England and Wales, and in Northern Ireland respectively. Civil legal aid is available in Scotland under the Legal Aid (Scotland) Act 1986.

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Part 2 Chapter 2: Temporary exclusion from the United Kingdom

6. Lords Amendments 3 and 4 would provide that the Secretary of State may impose a Temporary Exclusion Order only if the court has given prior permission or if he or she reasonably considers that the urgency of the case requires an order to be imposed without obtaining such permission.

7. Lords Amendment 5 would insert a new Clause which makes provision for the role of the court in providing prior permission to the Secretary of State to impose a Temporary Exclusion Order. The new Clause details the function of the court, allows the court to consider the application even if the person is not aware of the proposal to impose a Temporary Exclusion Order on him or her, and requires the court to apply judicial review principles in determining it. It also introduces a new Schedule. Lords Amendment 31 would insert a new Schedule which requires the Secretary of State to refer an urgent Temporary Exclusion Order to court after imposing it.

8. Lords Amendment 6 would insert a new Clause which makes provision for an individual subject to a temporary exclusion order to be able to apply to the court for a statutory review of the decision to impose a temporary exclusion order, and any associated in-country measures, once the individual is back in the United Kingdom. The new Clause details which decisions the individual may apply to have reviewed, the principles the court must apply in reviewing the decisions, and the powers it has on review.

9. Lords Amendment 7 would insert a new Clause which introduces two new Schedules. Lords Amendment 32 would insert a new Schedule which details the provisions that can be made by rules of court in relation to temporary exclusion order proceedings, and the provisions that must be made in relation to disclosure. Paragraphs 8 and 9 provide for the use of advisers appointed by the Lord Chancellor in any Temporary Exclusion Order proceedings or appeal proceedings. Paragraph 10 provides that a special advocate may be appointed to represent the interests of the party if the party and any legal representatives of the party are excluded from the proceedings. Lords Amendment 33 would insert a new Schedule which details the appeal proceedings available to an individual where a Temporary Exclusion Order or associated in-country measure under it is quashed or altered and the individual has already been convicted of an offence under clause 9(1) or (3) of the Bill in connection with the Order or measure.

10. Lords Amendment 8 is consequential on amendments 3 to 6, 31 and 32, setting out the meaning of terms used in them. Lords Amendment 9 would make amendments to the Senior Courts Act 1981, the Criminal Justice Act 1988 and the Regulation of Investigatory Powers Act 2000. These amendments are designed to ensure that the court's role in relation to a temporary exclusion order can be effective.

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Part 4: Aviation, shipping and rail

11. Lords Amendment 10 would provide that any new or amended authority-to-carry scheme, made by the Secretary of State under Clause 18, would be subject to direct Parliamentary scrutiny and brought into force by regulations subject to the draft affirmative procedure. Lords Amendment 11, which amends Clause 19, is consequential on Lords Amendment 10.

12. Lords Amendments 28 and 29 would provide that the provisions in the Bill at paragraphs 9 to 11 of Schedule 2, which amend the Aviation Security Act 1982, come into force on Royal Assent.

Part 5: Risk of being drawn into terrorism

13. Lords Amendments 12 and 13 would provide that specified authorities may be described in Schedule 3 in terms of certain of their functions, so that they are bound by the duty in clause 21 (the “Prevent” duty) only when discharging those particular functions.

14. Lords Amendment 14 would provide for Parliamentary scrutiny through the affirmative resolution procedure of the guidance issued by the Secretary of State to specified authorities about the exercise of the Prevent duty. Lords Amendment 15 would ensure that revisions of the guidance are also subject to the affirmative procedure.

15. Lords Amendment 16 would require higher and further education institutions to have particular regard to the duty to secure freedom of speech imposed by section 43(1) of the Education (No. 2) Act 1986 (if they are subject to that duty), when considering all the factors they need to consider when complying with the Prevent duty. It would also require institutions to have particular regard to academic freedom as described in section 202 of the Education Reform Act 1988 (if they are “qualifying institutions” within the meaning of that section) when carrying out the Prevent duty. The Amendment would also place a duty on the Secretary of State to have particular regard to the freedom of speech duty and the importance of academic freedom when issuing guidance or when giving directions to these educational bodies.

16. Lords Amendment 17 would place a duty on relevant higher and further education bodies to provide information to a monitoring authority to allow the monitoring authority to assess the bodies’ compliance with the Prevent duty. The monitoring authority may be the Secretary of State or a body to which he or she delegates the monitoring function.

17. Lords Amendment 18 would provide for the Secretary of State to give directions to relevant higher and further education bodies where satisfied that they

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have failed to comply with the duty to provide information to the monitoring authority. The Secretary of State may, if necessary, seek a mandatory order from the court to enforce any such directions.

18. Lords Amendment 19 would provide that the Prevent duty does not apply to functions exercised outside Great Britain (which is the territorial extent of Part 5 of the Bill).

19. Lords Amendments 20, 36 and 39 would ensure the correct references are made to the “Welsh Government” in Part 5.

20. Lords Amendments 26 and 30 would provide that the powers to amend Schedules 3 and 4 (the specified authorities under the Prevent duty and partners of panels under Chapter 2 of Part 5 respectively) come into force on Royal Assent. The power to issue guidance to those subject to the Prevent duty would also come into force on Royal Assent, including the duty in Lords Amendment 16 on the Secretary of State to pay particular regard to freedom of speech and academic freedom when issuing such guidance.

21. Lords Amendments 34 and 37 would ensure that Schedules 3 and 4 capture all the ways in which a local authority may delegate its functions in the context of education.

22. Lords Amendments 35 and 38 would amend Schedules 3 and 4 to apply the Prevent duty and Chapter 2 co-operation duty to a person specified by Welsh Ministers in respect of a Welsh local authority’s education functions. This is to ensure a consistent approach across England and Wales.

Clause 36: Privacy and Civil Liberties Board

23. Lords Amendment 21 would make changes to the statutory remit of the Independent Reviewer of Terrorism Legislation to include: Part 1 of the Anti-terrorism, Crime and Security Act 2001, and Part 2 of that Act insofar as the power to make a freezing order is used in cases relating to terrorism; the Counter-Terrorism Act 2008; and Part 1 of the Bill.

24. Lords Amendments 22, 25 and 27 would provide that the Independent Reviewer of Terrorism Legislation must set out a work programme at the beginning of each calendar year, starting in 2016, to include what he or she will report on in that 12 month period. These amendments would allow the Independent Reviewer to determine what the reviewer will report on in each 12 month period, which he or she must notify to the Secretary of State. However, the Terrorism Act 2000 would remain subject to an annual reporting requirement.

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25. Lords Amendments 23 and 24 would require that regulations to establish a Privacy and Civil Liberties Board brought forward under clause 36 must provide for the Secretary of State to consider recommendations from the Independent Reviewer of Terrorism Legislation before appointing members of the Board, and that the Board will operate under the direction and control of the Independent Reviewer, who will chair it.