

Ordinance 13 of 2015

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C O U N T E R - T E R R O R I S M O R D I N A N C E 2 0 1 5

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SCHEDULE — Searches in specified areas or places

C O U N T E R - T E R R O R I S M O R D I N A N C E 2 0 1 5

An Ordinance to make provision for powers to counter a terrorist threat

M. Wigston
ADMINISTRATOR

13 October 2015

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title

1. This Ordinance may be cited as the Counter-Terrorism Ordinance 2015.

Commencement

2. This Ordinance comes into force on 19 October 2015.

Terrorism: interpretation

- 3.—(1) In this Ordinance, “terrorism” means the use or threat of action where—
 - (a) the action falls within subsection (2);
 - (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public; and
 - (c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.(2) Action falls within this subsection if it—
 - (a) involves serious violence against a person;
 - (b) involves serious damage to property;
 - (c) endangers a person’s life, other than that of the person committing the action;
 - (d) creates a serious risk to the health or safety of the public or a section of the public; or
 - (e) is designed to seriously interfere with or seriously disrupt an electronic system.(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.
- (4) In this section—
 - (a) a reference to the use of action is a reference to the use action in the Areas;
 - (b) a reference to the threat of action is a reference to the threat of action made in the Areas relating to the use of action in the Areas, or in a country or territory other than the Areas;
 - (c) a reference to any person or to property is a reference to any person, or to property, wherever situated;
 - (d) a reference to the public includes a reference to the public of a country or territory other than the Areas;

- (e) "the government" means the Administration of the Areas or of a country or territory other than the Areas.

Interpretation: other defined words and expressions

4. In this Ordinance—

“act” and “action” include omission;

“code of practice” or “code” means the code of practice issued under section 7 including the code as altered or replaced under section 8;

“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;

“vehicle” includes an aircraft, hovercraft or vessel.

Searches in specified areas or places

5.—(1) The Chief Constable may give an authorisation under subsection (2) or (3) in relation to a specified area or place if the Chief Constable—

(a) reasonably suspects that an act of terrorism will take place; and

(b) reasonably 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 police officer 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 police officer 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 police officer 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 is or has been concerned in the commission, preparation or instigation of acts of terrorism.

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

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

(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 is or has been concerned in the commission, preparation or instigation of acts of terrorism.

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

(8) In this section “specified” means specified in an authorisation.

Code of practice relating to section 5

- 6.**—(1) The Administrator must prepare a code of practice containing guidance about—
- (a) the exercise of the powers to give an authorisation under section 5(2) or (3);
 - (b) the exercise of the powers conferred by such an authorisation and section 5(6); and
 - (c) such other matters in connection with the exercise of any of the powers mentioned in paragraphs (a) and (b) as the Administrator considers appropriate.
- (2) Such a code may make different provision for different purposes.
- (3) In the course of preparing such a code, the Administrator must consult the Presiding Judge.

Issue of code

7.—(1) The code must be brought into force by the Administrator in accordance with an order made as a public instrument.

(2) The code must be published in the Gazette.

(3) An order under subsection (1) may contain any transitional provisions and savings that appear to the Administrator to be necessary or expedient in relation to the bringing into force of the code brought into force by that order.

Alteration or replacement of code

8.—(1) The Administrator—

- (a) must keep the code under review; and
- (b) may prepare an alteration to the code or a replacement code.

(2) In the course of preparing an alteration or a replacement code, the Administrator must consult the Presiding Judge.

(3) Section 7 applies to an alteration or a replacement code prepared under this section as it applies to a code prepared under section 6.

Effect of code

9.—(1) A police officer must have regard to the code when exercising any powers to which the code relates.

(2) A failure on the part of a police officer to act in accordance with any provision of the code does not of itself make that person liable to criminal or civil proceedings.

(3) The code is admissible in evidence in any such proceedings.

(4) A court may, in particular, take into account a failure by a police officer to have regard to the code in determining a question in any such proceedings.

SCHEDULE

section 5

Searches in specified areas or places

Extent of search powers: supplementary

1. A police officer exercising the power conferred by an authorisation under section 5 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 police officer proposes to search a person or vehicle by virtue of section 5(2) or (3).

(2) The police officer 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. If the Chief Constable gives an authorisation under section 5 orally, the Chief Constable must confirm it in writing as soon as reasonably practicable.

4.—(1) Where—

- (a) a vehicle or pedestrian is stopped by virtue of section 5(2) or (3), and
- (b) the driver of the vehicle or the pedestrian applies to the Chief Constable for a written statement that the vehicle was stopped, or that the pedestrian was stopped, by virtue of section 5(2) or (as the case may be) (3),

the written statement must be provided by the Chief Constable.

(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 5 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 Chief Constable must inform the Administrator of an authorisation 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 Administrator 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 Administrator 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 Administrator may cancel an authorisation with effect from a time identified by the Administrator.

9.—(1) The Chief Constable may—

- (a) cancel an authorisation with effect from a time identified by the Chief Constable;
- (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 Administrator under paragraph 7 does not require confirmation by the Administrator.

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

Specified areas or places

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

- (a) the power of the Chief Constable 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 Administrator under paragraph 7(4)(b), and of the Chief Constable under paragraph 9(1)(c), includes a power to remove areas or places from the authorisation.

Interpretation

12. In this Schedule, “specified” means specified in an authorisation.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. This explanatory note relates to the Counter-Terrorism Ordinance 2015 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

Summary

3. The Ordinance provides a power for the Chief Constable to give an authorisation to allow police officers to stop and search persons and vehicles if the Chief Constable reasonably suspects that an act of terrorism will take place, and considers the authorisation is necessary to prevent that act.

Definition of terrorism

4. Terrorism is defined in section 3. It is action with a political, religious, racial or ideological motivation designed to influence a government or intimidate members of the public or a section of the public. It covers actions which might not be violent in themselves but which can have a devastating impact. These could include interfering with the supply of water or power where life, health or safety may be put at risk. Subsection (2)(e) covers the disrupting of key computer systems. Subsection (3) provides that where action involves firearms or explosives, it does not have to be designed to influence the government or to intimidate the public or a section of the public to be terrorism.

Stop and search powers under an authorisation

5. Section 5 allows the Chief Constable to give an authorisation to allow the stop and search of vehicles (including drivers of vehicles, passengers and anything found in or on a vehicle) and pedestrians (including anything carried by a pedestrian), to search for anything that may constitute evidence that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism, or the vehicle is being used for the purposes of terrorism.
6. A police officer in uniform may exercise the powers, once authorised, regardless of whether he or she has a reasonable suspicion that he or she will find such evidence in the course of a search.
7. An authorisation can only be given if the Chief Constable reasonably suspects that an act of terrorism will take place and reasonably considers that the authorisation of the powers is necessary to prevent such an act, and that the area or place specified in the authorisation is no greater than is necessary and the duration of the authorisation is no longer than is necessary.
8. The Schedule makes further provision about authorisations and searches in specified areas or places under section 5.
9. Paragraph 1 of the Schedule states that a police officer searching a person in public under powers given by section 5, cannot require that person to take off more than headgear, footwear, outer coat, jacket or gloves.

10. Paragraph 2 provides that a person or vehicle can be detained for as long as is reasonably required to search the person or vehicle, at or near to the place where the person or vehicle is stopped.
11. Paragraph 3 places a duty on the Chief Constable who has made an authorisation orally under section 5, to confirm it in writing as soon as reasonably practicable.
12. Paragraph 4 requires that if a pedestrian or vehicle is stopped under section 5(2) or (3) and the pedestrian or driver of the vehicle requests a statement that they were stopped by virtue of those sections, then a written statement must be provided, as long as it is requested within 12 months of the stop taking place.
13. Paragraph 5 states that an authorisation given under section 5 has effect from the time it is given and ends at the time or date specified in the authorisation, subject to the following paragraphs of the Schedule.
14. Paragraph 6 provides that individual authorisations cannot be in place for any longer than 14 days.
15. Paragraph 7 places a requirement on the Chief Constable to inform the Administrator of an authorisation as soon as reasonably practicable (sub-paragraph (1)). If the Administrator does not confirm the authorisation within 48 hours, it ceases to have effect (sub-paragraph (2)). If an authorisation is not confirmed, and ceases to have effect by virtue of sub-paragraph (2), it does not affect the lawfulness of anything carried out under the authorisation before it ceased to have effect (sub-paragraph (3)), including searches and seizures. The Administrator may amend the authorisation when confirming it, by shortening its duration or limiting the geographical extent of the authorisation (sub-paragraph (4)).
16. Paragraph 8 gives the Administrator a power to cancel an authorisation at any time.
17. Paragraph 9 confers a power on the Chief Constable to cancel an authorisation, shorten its duration or reduce its geographical extent (sub-paragraph (1)). If an authorisation has already been confirmed by the Administrator under paragraph 7 when the Chief Constable cancels it or amends it, the amended authorisation does not require further confirmation from the Chief Constable (sub-paragraph (2)).
18. Paragraph 10 provides that a new authorisation may be given, regardless of whether a previous authorisation exists, has been cancelled or expired.
19. Paragraph 11(a) provides that where an authorisation includes more than one area or place, it may specify different end dates for those areas or places, and where it does so, the power of the Administrator or the Chief Constable to shorten the duration of the authorisation includes the power to shorten any one or more of those periods. Paragraph 11(b) provides that if an authorisation is given which covers more than one area or place, then the Administrator or the Chief Constable may remove areas or places from the authorisation under their powers to restrict the geographical extent of an authorisation in paragraph 7(4)(b) or 9(1)(c) respectively.

Code of practice

20. Sections 6 to 9 make provision for a code of practice for terrorism stop and search powers under section 5.
21. Section 6 places a duty on the Administrator to prepare a code of practice about the powers. The Administrator must consult the Presiding Judge.
22. Section 7 makes provision for the code to be published and brought into force by an order made as a public instrument.
23. Section 8 requires that the code is kept under review.

24. Section 9(1) requires a police officer to have regard to the code when exercising the powers to which it relates and explains the effect of the code. Section 9(2) provides that a failure to adhere to any aspects of the code of practice would not, of itself, render a person liable to civil or criminal proceedings. However, the search powers code is admissible in criminal or civil proceedings (section 9(3)) and a court may take into account any failure by a police officer to comply with the duty to have regard to the code (section 9(4)).

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