

House of Representatives

Supplementary Order Paper

Thursday, 5 December 2019

Terrorism Suppression (Control Orders) Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper sets out amendments to the Terrorism Suppression (Control Orders) Bill. The amendments are the changes on Supplementary Order Paper No 397 (which is superseded by this Supplementary Order Paper), other changes that were considered and not agreed to by the Foreign Affairs, Defence, and Trade Committee, and some further amendments. The amendments—

- require the court, in determining whether evidence establishes or helps to establish compliance with *clause 6*, to have regard to—
 - the source of that evidence; and
 - the validity, authenticity, and reliability of that evidence (*clause 6A(1)*):
- ensure that the *clause 6A(1)* duty also applies in respect of a determination of the validity, authenticity, and reliability of any conviction or other foreign country action at issue in terms of *clause 6(1)(c), (d), or (e)* (*clause 6A(2)*):
- ensure that *clause 6A* does not limit or affect any other rules of law relating to the admission or use of evidence (*clause 6A(3)*):
- replace references, in the definition of engagement in terrorism-related activities, to *supporting* the carrying out of terrorism, with more limited references to *materially supporting* the carrying out of terrorism (*clause 7(1)(b) and (3), emphasis added*):
- make it clear that the court may make a control order only if satisfied that the relevant person poses a *real* risk of engaging in terrorism-related activities in a country (*clause 11(2)(a), emphasis added*). Similar amendments are made to references to any specified risk or risks in *clauses 14, 16, and 19*:
- require an application for an interim control order to be made, and heard and determined by the court, without notice to the relevant person if the application is made before the relevant person arrives in New Zealand, unless the Commissioner believes on reasonable grounds that—
 - service out of New Zealand of the documents to be served is reasonably practicable in the circumstances; and
 - it is not necessary and appropriate to make the application, and for it to be heard and determined, without notice in order to manage the real risks posed by the relevant person of engagement in terrorism-related activities in a country (*clause 14(2)(a)*):
- make the list of kinds of requirements that can be imposed by a control order an exhaustive list, rather than an illustrative list (*clause 16*):
- adjust the item in that list about requirements that prohibit or restrict the relevant person from carrying out specified activities so that the specified activities concerned must be ones *related to the real risk that the relevant person poses* (*clause 16(g), emphasis added*):
- enable the court to vary or discharge a control order (whether an interim control order or a final control order) or its requirements or both on its own initia-

tive, after notifying the Commissioner and the relevant person of the variation or discharge, giving them a reasonable opportunity to make submissions on it, and considering any submissions they make on it (*clause 26*):

- specify additional requirements for decisions that supporting information is not disclosable, including one that the court appoint a suitably qualified and experienced lawyer to fulfil the role of a special advocate to act in the interests of the person who is or may be a relevant person (*clause 35*):
- make control order proceedings a specified application (as that term is defined in section 4(1) of the Legal Services Act 2011), so that legal aid for control order proceedings is more accessible than it is for standard civil proceedings (*new clause 36*):
- require a review of the new Act as soon as practicable after the second anniversary of its commencement (*new clause 37*).

The Honourable Andrew Little, in Committee, to propose the amendments shown in the following document.

Hon Andrew Little

Terrorism Suppression (Control Orders) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Terrorism Suppression (Control Orders) Act **2019**.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

Part 1 Preliminary provisions

3 Purpose of this Act

The purpose of this Act is to allow requirements to be imposed on a relevant person by a control order for the following purposes:

Main purposes

- (a) to protect the public from terrorism:
- (b) to prevent engagement in terrorism-related activities in a country:

Incidental purposes

- (c) to support the relevant person's reintegration into New Zealand or rehabilitation, or both.

Compare: Criminal Code Act 1995 s 104.1 (Australia)

4 Overview of decisions in making control order

- (1) A diagrammatic overview of decisions in making a control order is set out in **Schedule 2**.
- (2) The diagram is intended as a guide only.

Compare: 2004 No 38 s 3; 2006 No 84 s 5; 2007 No 97 s AA 2(1); 2008 No 28 s 5; 2008 No 38 s 3

5 Interpretation

In this Act, unless the context otherwise requires,—

accessory after the fact, in relation to terrorism, means a person (**A**) who, knowing any other person (**B**) to have been a party to the terrorism, receives, comforts, or assists B or tampers with or actively suppresses any evidence against B, in order to enable B to escape after arrest or to avoid arrest or conviction

Commissioner means a person who is—

- (a) the Commissioner of Police holding office under section 12 of the Policing Act 2008; or
- (b) an acting Commissioner of Police appointed or deemed to be appointed under section 15 of that Act

constable has the meaning in section 4 of the Policing Act 2008

control order means an interim control order or a final control order made under **section 11(1)**

country includes any State, territory, province, or other part of a country

court means the High Court

designated terrorist entity has the meaning in section 4(1) of the Terrorism Suppression Act 2002

disclosable supporting information, for an application for, or for the renewal, variation, or discharge of, a control order, means all information supporting the application that can be disclosed in accordance with all current directions, orders, or other relevant decisions, if any, of the court

engages in terrorism-related activities has the meaning in **section 7(1)**

foreign country means a country other than New Zealand

long-term sentence has the meaning in section 4(1) of the Parole Act 2002

Minister, in relation to this Act, means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

other party, in relation to terrorism, means a person who is not a or the principal party but who—

- (a) does or omits an act for the purpose of aiding any person to commit the terrorism; or
- (b) abets any person in the commission of the terrorism; or
- (c) incites, counsels, or procures any person to commit the terrorism

principal party, in relation to terrorism, means a person who (alone or with any other person or other people) actually commits the terrorism

prison has the meaning in section 3(1) of the Corrections Act 2004

relevant person has the meaning in **section 6**

requirements, of a control order, means the prohibitions, restrictions, or other requirements that the order imposes, in accordance with this Act, on the relevant person in respect of whom the order is made

short-term sentence has the meaning in section 4(1) of the Parole Act 2002

terrorism means a terrorist act as defined in section 5(1) of the Terrorism Suppression Act 2002.

6 Meaning of relevant person

- (1) A **relevant person** is a person who is 18 years old or older, who is or may be coming to New Zealand or has arrived in New Zealand, and who before their arrival in New Zealand—
 - (a) engaged in terrorism-related activities (*see* **section 7(1)**) in a foreign country; or
 - (b) travelled, or attempted to travel, to a foreign country to engage in terrorism-related activities in a foreign country; or

- (c) was convicted in a foreign country of an offence because of conduct that is or includes engaging in terrorism-related activities in a foreign country; or
 - (d) was deported from, had a visa cancelled by, or had any passport, citizenship, or nationality revoked by, a foreign country for reasons that are or include a security risk related to conduct that is or includes engaging in terrorism-related activities in a foreign country; or
 - (e) is or was the subject of any control order regime, or other analogous supervisory regime, in a foreign country, because of conduct that is or includes engaging in terrorism-related activities in a foreign country.
- (2) **Subsection (1)** applies whether or not the person is, or is connected to, a designated terrorist entity because of conduct that is or includes those activities.
 - (3) **Subsection (1)** (except **subsection (1)(c)**) applies even if the person has been prosecuted in a foreign country for, but was not convicted in a foreign country of, an offence because of conduct that is or includes those activities or, as the case requires, that is or includes travelling, or attempting to travel, to a foreign country to engage in those activities in a foreign country.
 - (4) **Subsection (1)** applies even if the person is, or may be, a returning offender, or returning prisoner, who is subject to all or any of the Returning Offenders (Management and Information) Act 2015.

6A Duty to have regard to specified aspects of evidence relied on

- (1) In determining whether evidence establishes or helps to establish compliance with **section 6**, the court must have regard to—
 - (a) the source of that evidence; and
 - (b) the validity, authenticity, and reliability of that evidence.
- (2) The **subsection (1)** duty also applies in respect of a determination of the validity, authenticity, and reliability of any conviction or other foreign country action at issue in terms of **section 6(1)(c), (d), or (e)**.
- (3) This section does not limit or affect any other rules of law relating to the admission or use of evidence.

7 Meaning of engagement in terrorism-related activities

Definition

- (1) A person **engages in terrorism-related activities** in a country if the person does all or any of the following in that country:
 - (a) carries out terrorism (whether as a or the principal party, any other party, or an accessory after the fact):
 - (b) facilitates or supports materially the carrying out of terrorism.

Carrying out includes preparations, credible threats, and attempts

- (2) For the purposes of this Act, terrorism is **carried out** if any 1 or more of the following occurs:
- (a) planning or other preparations to carry out the terrorism, whether it is actually carried out or not:
 - (b) a credible threat to carry out the terrorism, whether it is actually carried out or not:
 - (c) an attempt to carry out the terrorism:
 - (d) the carrying out of the terrorism.

Facilitation or material support requires some actual or constructive knowledge

- (3) For the purposes of this Act, terrorism is **facilitated or materially supported** only if the facilitator or material supporter knows, or ought reasonably to know, that terrorism is facilitated or materially supported, but this does not require that—
- (a) the facilitator or material supporter knows, or ought reasonably to know, that any specific terrorism is facilitated or materially supported:
 - (b) any specific terrorism was foreseen or planned at the time it was facilitated or materially supported:
 - (c) any terrorism was actually carried out.

Compare: 1961 No 43 ss 66, 70, 71, 72, 312; 2002 No 34 s 25

8 Status of examples

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Compare: 2015 No 70 s 26; 2016 No 16 s 6; 2017 No 5 s 7; 2018 No 32 s 14

9 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

10 Act binds the Crown

This Act binds the Crown.

Part 2 Control orders

Making and content

11 Power to make

- (1) The court may make an order—
 - (a) in respect of a person who the court is satisfied is a relevant person (*see* **sections 6, 6A, and 7**); and
 - (b) imposing requirements on the relevant person for the purposes stated in **section 3(a) to (c)**.
- (2) The court may make a control order only if satisfied that—
 - (a) the relevant person poses a real risk of engaging in terrorism-related activities in a country; and
 - (b) the requirements the order imposes for the main purposes stated in **section 3(a) and (b)** are necessary and appropriate, and are only those necessary and appropriate,—
 - (i) to protect the public from terrorism; and
 - (ii) to prevent engagement in terrorism-related activities in a country; and
 - (c) any requirements the order imposes for 1 or both of the incidental purposes stated in **section 3(c)** are necessary and appropriate, and are only those necessary and appropriate, to support the relevant person's reintegration into New Zealand or rehabilitation, or both.
- (3) In determining any requirements imposed, the court must also—
 - (a) consider how requirements, if imposed, will or may affect the person's personal circumstances (for example, financial position, health, and privacy); and
 - (b) consider whether requirements are justified limits on rights and freedoms in the New Zealand Bill of Rights Act 1990, and consider any other matters the court thinks relevant; and
 - (c) comply with **section 16** and with the limits in **sections 17, 18, and 19**.

12 Required content

- (1) A control order must state whether it is an interim control order or a final control order.
- (2) A final control order that replaces an interim control order must identify that interim control order.
- (3) A control order must also state the terms, and any conditions, of—

- (a) the requirements the order imposes for the main purposes stated in **section 3(a) and (b)**; and
 - (b) any requirements the order imposes for 1 or both of the incidental purposes stated in **section 3(c)**.
- (4) A control order must also state the duration of the order (subject to earlier variation, discharge, or expiry of the order or its requirements) (*see also section 24*).

Application

13 Application required

- (1) The court may make a control order only on an application for the purpose made by the Commissioner under this Act.
- (2) The application must—
 - (a) state whether the order sought by the Commissioner is an interim control order or a final control order; and
 - (b) if it is made, and to be heard and determined by the court, without notice to the relevant person, make clear how the application complies with **section 14(2)(a) or (b)**.
- (3) The application must also state whether any final control order sought replaces an interim control order.
- (4) The application must also state the terms, and any conditions, of the requirements of the order sought by the Commissioner, indicating whether they are—
 - (a) the requirements the order would impose for the main purposes stated in **section 3(a) and (b)**; or (if applicable)
 - (b) any requirements the order would impose for 1 or both of the incidental purposes stated in **section 3(c)**.

14 Application for interim control order

- (1) The Commissioner may make an application for an interim control order in respect of a relevant person only if—
 - (a) the application is made—
 - (i) before the relevant person arrives in New Zealand; or
 - (ii) within 12 months after the relevant person arrives in New Zealand; and
 - (b) the Commissioner believes on reasonable grounds that it is necessary and appropriate that the interim control order is made as soon as practicable in order to manage the real risks posed by the relevant person of engagement in terrorism-related activities in a country.
- (2) The application for the interim control order—

- (a) must be made, and must be heard and determined by the court, without notice to the relevant person if the application is made before the relevant person arrives in New Zealand; ~~and, unless the Commissioner believes on reasonable grounds that—~~
 - (i) service out of New Zealand of the documents to be served is reasonably practicable in the circumstances; and
 - (ii) it is not necessary and appropriate to make the application, and for it to be heard and determined, without notice in order to manage the real risks posed by the relevant person of engagement in terrorism-related activities in a country; and
- (b) may be made, and must be heard and determined by the court, without notice to the relevant person if—
 - (i) the application is made after the relevant person arrives in New Zealand; and
 - (ii) the Commissioner believes on reasonable grounds that it is necessary and appropriate to make the application, and for it to be heard and determined, without notice in order to manage the real risks posed by the relevant person of engagement in terrorism-related activities in a country.
- (3) If the application for the interim control order is made on notice to the relevant person, the documents to be served must exclude any information supporting the application that is not disclosable supporting information.
- (4) The application for the interim control order must be—
 - (a) set down for hearing, and heard, as soon as practicable; and
 - (b) determined as soon as practicable.
- (5) On or after making an interim control order in respect of a relevant person, the court must consider whether to direct under **section 15(1)(b)** a period (longer or shorter than 3 months after the date on which the interim order was served on the relevant person) as the period within which the Commissioner may make an application for a final control order in respect of the relevant person.

15 Application for final control order

- (1) The Commissioner may make an application for a final control order in respect of a relevant person only if—
 - (a) no interim control order in respect of the relevant person has been applied for, and the application for the final control order is made after, and within 12 months after, the relevant person arrives in New Zealand; or
 - (b) an interim control order in respect of the relevant person was applied for and made, and the application for the final control order is made after the relevant person arrives in New Zealand and—

- (i) within 3 months after the date on which the interim order was served on the relevant person; or
 - (ii) within any longer or shorter period the court directs (on its own initiative or on an application for the purpose made) on or after making the interim order and during that 3-month period; or
 - (c) an interim control order in respect of the relevant person was applied for and declined, and the application for the final control order is made after, and within 12 months after, the relevant person arrives in New Zealand, and is made because of a material change in circumstances since the interim control order was declined.
- (2) The application for the final control order must be—
- (a) made on notice to the relevant person; and
 - (b) set down for hearing, and heard, as soon as practicable; and
 - (c) determined as soon as practicable.
- (3) Because the application for the final control order is made on notice to the relevant person, the documents to be served must exclude any information supporting the application that is not disclosable supporting information.

Examples of ~~r~~Requirements that may be imposed

16 ~~Examples of r~~Requirements that may be imposed

~~Requirements that a~~ A control order may imposes on a relevant person ~~may—~~
only requirements that do all or any of the following:

Examples of ~~p~~Prohibitions or restrictions

- (a) prohibit or restrict the relevant person from being in or at specified areas or places (for example, international ports, gun clubs, or specified residences) without Police escort:
- (b) prohibit or restrict the relevant person from leaving New Zealand or possessing passports, or other international travel documents of any kind, issued by any country:
- (c) prohibit or restrict the relevant person from communicating or associating with specified individuals, or a specified class of individuals (for example, individuals identified as being at real risk of radicalisation, or individuals identified as posing a real risk of further radicalising the relevant person):
- (d) prohibit or restrict the relevant person from disclosing or receiving specified information or otherwise dealing with specified classes of information (for example, means or methods of carrying out terrorism):
- (e) prohibit or restrict the relevant person from accessing or using, in any setting (for example, in a place of paid or voluntary work or of study), specified forms of telecommunication or other technology (whether the

devices or facilities concerned are public or private) including the Internet (for example, prohibiting the relevant person from accessing the Internet except on devices known to the Police):

- (f) prohibit or restrict the relevant person from possessing or using specified articles or substances (for example, possessing terrorist propaganda material or possessing domestic chemicals above a certain quantity):
- (g) prohibit or restrict the relevant person from carrying out specified activities related to the real risk that the relevant person poses, including specified activities in respect of their work, occupation, or recreational activities:
- (h) prohibit or restrict the relevant person from holding accounts, possessing certain financial instruments, or using specified financial services:
- (i) prohibit or restrict the relevant person from transacting in property (for example, property over a certain value or transactions involving certain people):

Examples of ~~o~~Other requirements

- (j) require the relevant person to reside at a specified address agreed between the relevant person and the Police (or as otherwise specified by the court) and to remain at that address between specified times each day, or on specified days (*see also section 17*):
- (k) require the relevant person to report to specified constables at specified times and places (for example, meeting a constable twice a week):
- (l) require the relevant person to facilitate reasonable access by the Police or their agents to premises, equipment, or information if that access is necessary for monitoring compliance with the requirements stated in the order (for example, facilitating access to search the relevant person's residence, electronic devices, or financial accounts):
- (m) require that the relevant person allow themselves to be photographed and impressions made of their fingerprints:
- (n) require that the relevant person submits to electronic monitoring of compliance with the requirements of the control order concerned and does not tamper with, or damage, or do anything to interfere with the functioning of the electronic monitoring device (*see also section 18*):
- (o) require that the relevant person undertake alcohol and drug assessments, and rehabilitative or reintegrative needs assessments:
- (p) require that the relevant person, if they have given and not withdrawn their informed consent to do so, engage with specified rehabilitative services (for example, alcohol and drug treatment services) (*see also section 19*).

*Limits on requirements***17 Limit on requiring relevant person to remain at specified address**

No requirement of the kind stated in **section 16(j)** can require the relevant person to remain at a specified address for more than 12 hours in any 24-hour period.

18 Limit on requiring electronic monitoring

The court must not impose a requirement of the kind stated in **section 16(n)** if the court considers that a less restrictive requirement or combination of requirements would be sufficient to achieve the main purposes stated in **section 3(a) and (b)** and (if applicable) 1 or both of the incidental purposes stated in **section 3(c)**.

Compare: 2000 No 38 s 30C

19 Limit on requiring relevant person to engage with specified rehabilitative services

- (1) No relevant person may be made, or may remain, subject to a requirement of the kind stated in **section 16(p)** unless the relevant person—
 - (a) has been fully advised, by a person who is qualified to prescribe or provide the specified rehabilitative services, about their nature and their intended and likely effects and any known real risks of engaging with them; and
 - (b) is competent to make an informed choice and give informed consent to engaging with them; and
 - (c) gives, and has not withdrawn, informed consent to engaging with them.
- (2) Informed consent of that kind can be given, withheld, or withdrawn by words or conduct.
- (3) No particular conduct, or form of words, is required to give, withhold, or withdraw informed consent of that kind.
- (4) A relevant person who withholds, or withdraws, informed consent of that kind does not breach the relevant requirement for the purposes of **section 31** (offence to breach requirements).

Compare: 2000 No 38 ss 30(4), (4A), 30AA; 2002 No 10 s 15(4), (5)

*Service***20 Service of control order**

- (1) The Commissioner must serve on a relevant person (**P**) a control order made in respect of the relevant person.
- (2) The control order must be served,—
 - (a) if practicable, on P's arrival in New Zealand; or

- (b) if service on P's arrival in New Zealand is not practicable, as soon as is reasonably practicable after P's arrival in New Zealand; but
 - (c) in any event, not later than 12 months after the control order is made.
- (3) The control order and its requirements expire if the control order is not served within that 12-month period, but its expiry does not prevent another control order being applied for and made in respect of the same relevant person based on engagement in 1 or both of the following:
- (a) the same terrorism-related activities in a foreign country;
 - (b) later and different terrorism-related activities in a foreign country.

21 Information to be served with interim control order made without notice

The Commissioner must prepare, and serve with an interim control order made without notice to, and served on, the relevant person, the following information:

- (a) the name of the relevant person who is subject to the order; and
- (b) that the relevant person is subject to an interim control order made by the High Court under this Act; and
- (c) a summary of the court's reasons for making the order, and of the reasons why the court considered that the requirements of the order comply with **section 11(2)(b) and (c)**; and
- (d) a general explanation of the effect of the order and its requirements; and
- (e) that the order and its requirements take effect when they are served on the relevant person; and
- (f) the maximum duration of the order and its requirements (*see section 24(1)*); and
- (g) any other information necessary to enable or help the relevant person to comply with all of the requirements of the order; and
- (h) a copy of the disclosable supporting information; and
- (i) how the relevant person can challenge the order, its requirements, or both—
 - (i) by applying to the High Court under this Act to vary or discharge the order, its requirements, or both;
 - (ii) by opposing an application made (no later than the date stated in or directed under **section 15(1)(b)**) by the Commissioner to the High Court for a final control order in respect of the relevant person and to replace the interim order;
 - (iii) by appealing under the Senior Courts Act 2016 to the Court of Appeal, or the Supreme Court, or both against the order, its requirements, or both (or, if the order is replaced by a final control

order, against the final control order, its requirements, or both);
and

- (j) an explanation of the relevant person's related rights to legal advice and representation; and
- (k) an explanation of the relevant person's related rights to apply for legal aid; and
- (l) a general explanation of the effect of automatic suppression under this Act of the identity of the relevant person.

22 Entry to premises to serve control order

- (1) The court may issue a warrant authorising entry—
 - (a) to any premises where the Police believe on reasonable grounds that a relevant person is present; and
 - (b) in order to enable service on the relevant person of a control order.
- (2) The court may issue the warrant—
 - (a) only on an application for the purpose made by the Commissioner; and
 - (b) only if satisfied that a person has refused or refuses to allow the Police to enter those or any other premises in order to prevent or avoid service on the relevant person of a control order.

Compare: 2015 No 112 s 21

Taking effect, duration, and renewal

23 Taking effect

- (1) A control order takes effect when it is served on the relevant person.
- (2) This section does not alter the operation of any requirements expressed to take effect only at a later time or times.

24 Duration

- (1) The duration of an interim control order made in respect of a relevant person is (subject to earlier variation, discharge, or expiry of the order or its requirements, and *see also* **section 12(4)**) from when the order is served on the relevant person until the order expires when—
 - (a) a final control order that replaces the order is made by the court and served on the relevant person; or
 - (b) no application for a final control order that replaces the order is made within the applicable period (*see* **section 15(1)(b)**); or
 - (c) an application of that kind made within that period is withdrawn, or is finally determined by the court refusing a final control order.

- (2) The duration of a final control order must be not longer than the court considers necessary having regard to the purposes stated in **section 3(a) to (c)** (*see also section 12(4)*).
- (3) But that duration must also be not longer than 2 years after the final control order is served on the relevant person in respect of whom the order is made.
- (4) Those 2 years include, for a final control order that replaces an interim control order, the period the interim control order has effect.
- (5) Those 2 years exclude, for a final control order, any period during which both the order and its requirements are wholly suspended under **section 27**.
- (6) A final control order expires (subject to earlier variation, discharge, or expiry of the order or its requirements and to **section 25(2)**) at the end of its duration, but its expiry does not prevent another control order being applied for and made in respect of the same relevant person but based on engagement in later and different terrorism-related activities in a foreign country.

25 Renewal

- (1) The court may renew a final control order on an application for the purpose made by the Commissioner within its duration.
- (2) If an application for renewal of a final control order is made, the order has effect until the application is withdrawn or finally determined.
- (3) No final control order can be renewed more than twice.
- (4) No control order that has expired under **section 28** (expiry if relevant person sentenced to long-term sentence) can be renewed.
- (5) In deciding the application, the court must apply the provisions of this Act about making, and the requirements of, a final control order.
- (6) In particular, because the application is made on notice, the documents to be served must exclude any information supporting the application that is not disclosable supporting information.
- (7) However, **sections 13(1) to (3) and 15(1)** do not apply to the application.
- (8) A renewed final control order takes effect and expires, and is varied, suspended, or discharged, in the same way as one that has not been renewed.

*Variation or discharge, and suspension or expiry,
of control order and requirements*

26 Variation or discharge

- (1) The court may, ~~on an application made for the purpose by the Commissioner or the relevant person, vary or discharge a control order (whether an interim control order or a final control order) or its requirements or both.~~
 - (a) on an application made for the purpose by the Commissioner or the relevant person; or

- (b) on its own initiative.
- (1A) Before making an own-initiative decision about a variation or discharge, the court must—
- (a) notify the Commissioner and the relevant person of it; and
 - (b) give them a reasonable opportunity to make submissions on it; and
 - (c) consider any submissions they make on it.
- (2) In deciding ~~the application~~whether to vary or discharge a control order or its requirements, the court must apply the provisions of this Act about making, and the requirements of, a final control order.
- (3) In particular, because the application or own-initiative decision is made on notice, the documents to be served must exclude any information supporting the application or own-initiative decision that is not disclosable supporting information.
- (4) However, **sections 13(1) to (3) and 15(1)** do not apply to the application or own-initiative decision.
- (5) No variation of a control order can extend the duration of the control order under **section 24**.
- (6) A varied control order takes effect and expires, and is renewed, varied, suspended, or discharged, in the same way as one that has not been varied.

27 Suspension

- (1) This section applies if, while a relevant person is subject to a control order, the relevant person is detained—
- (a) in a prison on remand; or
 - (b) in a prison while serving a short-term sentence; or
 - (c) in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (d) in a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.
- (2) The control order and its requirements, to the extent (if any) that they cannot be complied with during that detention, are suspended until the relevant person is no longer detained in the prison, hospital, or facility.

Compare: 2014 No 68 s 139

28 Expiry if relevant person sentenced to long-term sentence

- (1) This section applies if, while a relevant person is subject to a control order, the relevant person is sentenced to a long-term sentence.
- (2) The control order and its requirements expire, and the control order cannot be replaced by a final control order or renewed, but its expiry does not prevent another control order being applied for and made in respect of the same rele-

vant person but based on engagement in later and different terrorism-related activities in a foreign country.

Appeals

29 General effect of appeals

- (1) This section applies if, in a proceeding, a decision is given to make, renew, vary, or discharge a control order imposing a requirement.
- (2) This Act does not affect the application to the proceeding, or to the decision, of rules of court on the general effect of appeals.
- (3) An example is rules of court under which any appeal, application for leave to appeal, or giving of leave to appeal, does not operate as a stay of the proceeding, or a stay of execution of the decision, unless the court appealed from or the appeal court orders, or grants interim relief, to the contrary.

Compare: SR 2004/199 r 30; SR 2005/69 r 12

Other matters

30 Standard of proof

- (1) This section applies to a question of fact arising in a proceeding—
 - (a) that is a proceeding under this Act; and
 - (b) that is not a proceeding for an offence against this Act.
- (2) The question must be decided on the balance of probabilities.

31 Offence to breach requirements

- (1) A person commits an offence if the person—
 - (a) is a relevant person in respect of whom the court has made a control order; and
 - (b) breaches, without reasonable excuse, a requirement of the control order.
- (2) A person who commits an offence under this section is liable on conviction to—
 - (a) imprisonment for a term not exceeding 1 year; or
 - (b) a fine not exceeding \$2,000.

Compare: 2002 No 10 s 71; 2015 No 112 s 31

32 Automatic suppression of identity of relevant person

- (1) This section applies to a person if—
 - (a) an application for, or for the renewal, variation, or discharge of, a control order in respect of the person has been made and has not been withdrawn or finally determined; or (as the case requires)

- (b) a control order has been made, renewed, varied, or discharged in respect of the person.
- (2) The purposes of this section are—
 - (a) to protect the public from terrorism:
 - (b) to prevent engagement in terrorism-related activities in a country:
 - (c) to protect the person and to support the person’s reintegration into New Zealand or rehabilitation, or both.
- (3) No person may publish, in any report or account of the proceeding in which the court considers and determines the application or (as the case requires) makes, renews, varies, or discharges the control order, the person’s name, address, or occupation, unless the court, by order, permits the publication.
- (4) The court may make an order that permits the publication (for example, if the person applies to the court for such an order and the court is satisfied that the person understands the nature and effect of their decision to apply for the order) only if satisfied that permitting the publication is consistent with the purposes of this section.
- (4A) In particular, before making an order that permits the publication, the court must consider whether the order will or may lead to the publicising of views that do either or both of the following:
 - (a) promote or encourage hostility towards any group of persons on 1 or more of the grounds specified in section 21 of the Human Rights Act 1993:
 - (b) promote or encourage criminal acts or terrorism.
- (4B) An order under this section that permits the publication does not limit any power to clear the court, or to forbid publication, that a court has under any other law.
- (5) Nothing in this section applies to or prevents communication, by or on behalf of the Commissioner or another person performing official duties or functions, of information if the communication is necessary or desirable for the administration or enforcement of this Act.
- (6) In this section, **name**, in relation to a person, means the person’s name and any particulars likely to lead to the person’s identification.

Compare: 2011 No 81 ss 194, 195, 201

33 Offence to breach automatic suppression of identity

Knowing or reckless publication

- (1) A person commits an offence if the person knowingly or recklessly publishes any name, address, occupation, or other information in breach of **section 32**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—

- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months;
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Other publication

- (3) A person commits an offence if the person publishes any name, address, occupation, or other information in breach of **section 32**.
- (4) In a prosecution for an offence against **subsection (3)**, it is not necessary for the prosecution to prove that the defendant intended to commit an offence.
- (5) **Subsection (3)** does not apply to a person who hosts material on websites or other electronic retrieval systems that can be accessed by a user unless the specific information has been placed or entered on the site or system by that person.
- (6) A person who commits an offence against **subsection (3)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$25,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Compare: 2011 No 81 s 211

34 Returning Offenders (Management and Information) Act 2015

This Act does not limit or affect the application or operation of the Returning Offenders (Management and Information) Act 2015.

35 Additional requirements for decisions that supporting information is not disclosable

- (1) This section applies when the court is considering making under other relevant law any order, direction, or other decision to the effect that any information supporting any application made under this Act is not disclosable to, or to any person acting for,—
 - (a) a person who is or may be a relevant person; or
 - (b) any other non-Crown party.
- (2) The court, when considering making a decision of that kind, must—
 - (a) have regard to whether the interests or factors supporting a decision of that kind are or include a real risk to any identifiable person or people; and
 - (b) appoint as a special advocate a person who—
 - (i) is a lawyer (as defined in section 6 of the Lawyers and Conveyancers Act 2006), is not suspended from practice as a barrister, a solicitor, or both, under that Act, and is not struck off the roll of barristers and solicitors of the High Court; and

- (ii) holds an appropriate security clearance that allows the person to see information that is or may be classified security information; and
- (iii) is otherwise suitably qualified and experienced to fulfil the role of a special advocate; and
- (c) empower the person appointed under **paragraph (b)** to act in the interests of the person who is or may be a relevant person, and to present arguments on the relevance and reliability of the supporting information; and
- (d) allow the person appointed under **paragraph (b)** to receive instructions from any person acting for the person who is or may be a relevant person.

Compare: 2009 No 51 ss 264, 265; 2013 No 91 s 105; 2015 No 70 s 162, Sch 4, cl 6

36 Amendment to Legal Services Act 2011

- (1) This section amends the Legal Services Act 2011.
- (2) In section 4(1), definition of **specified application**, after paragraph (ca), insert:
 - (cb) by a person who is a respondent to an application under the **Terrorism Suppression (Control Orders) Act 2019**, or who is subject to an order under that Act, in respect of an application under that Act; or

37 Review of Act

- (1) The Minister must, as soon as practicable after the second anniversary of the day on which this Act comes into force,—
 - (a) commence a review of the need for, and operation and effectiveness of, this Act; and
 - (b) prepare a report on that review.
- (2) The Minister must ensure that the people and organisations that the Minister thinks appropriate are consulted during the preparation of the report about the matters to be considered in the report.
- (3) As soon as practicable after the report has been completed, the Minister must present a copy of the report to the House of Representatives.

Compare: 2017 No 29 s 86; 2019 No 58 s 148

Schedule 1
Transitional, savings, and related provisions

s 9

Part 1
Provisions relating to this Act as enacted

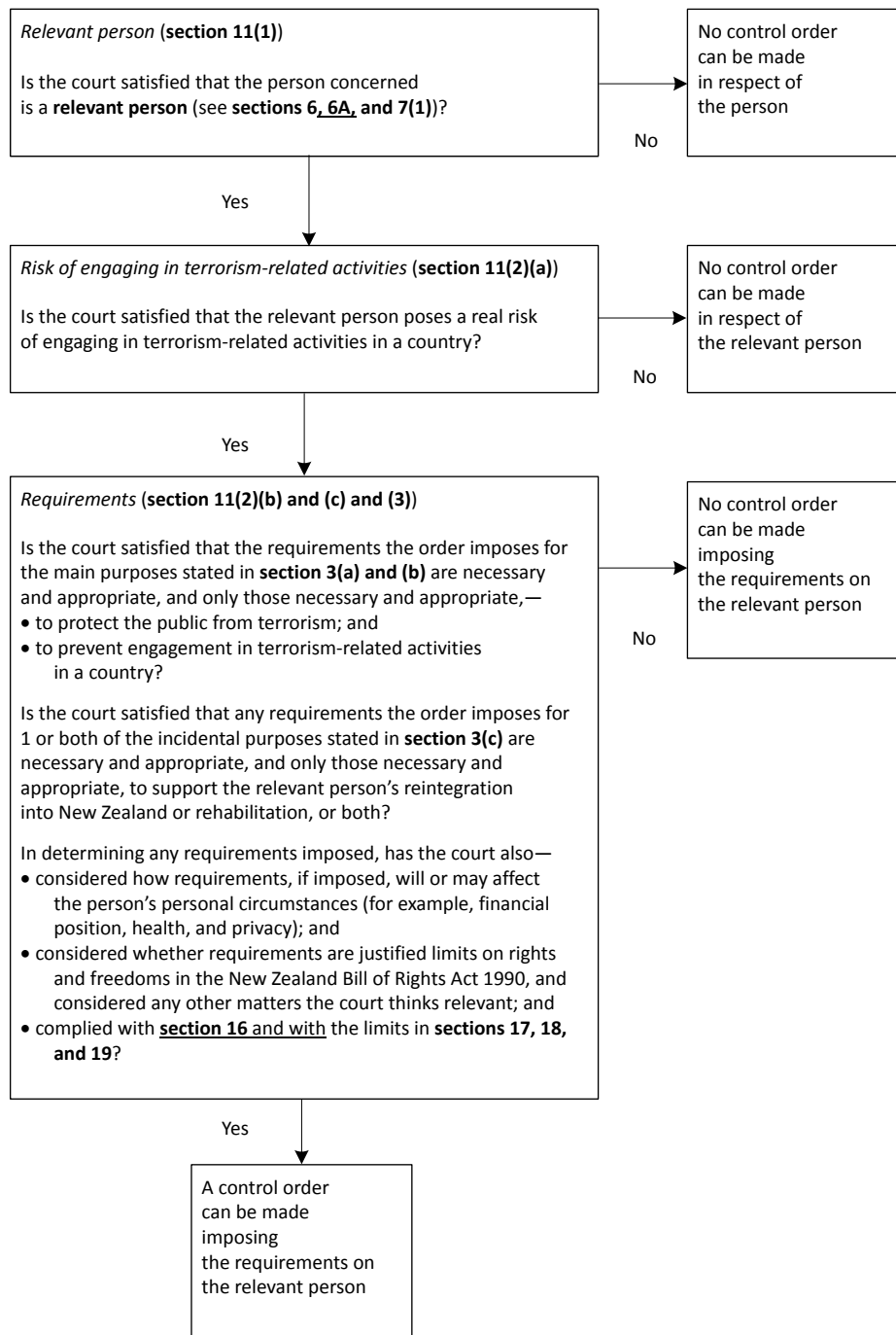
1 Decisions may be based on pre-commencement conduct

A person's conduct before the commencement of this Act may be relied on (with or without any later conduct of the person) in making decisions—

- (a) under this Act; and
- (b) after that commencement.

Schedule 2 Overview of decisions in making control order

s 4



**Proposed amendments to
Terrorism Suppression (Control Orders) Bill**

Wellington, New Zealand:

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