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as at 10 May 2023



Terrorism Suppression (Control Orders) Act 2019

Public Act 2019 No 79
Date of assent 19 December 2019
Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

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Control orders

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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

community-based sentence has the meaning in section 44 of the Sentencing Act 2002

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 12(1)

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

court means the High Court

determinate sentence of imprisonment means a sentence of imprisonment for a fixed term and that is final, or that is the subject of an appeal unless the sentence is—

- (a) suspended pending determination of the appeal; or
- (b) set aside, and not replaced by a sentence of imprisonment for a fixed term, on the appeal

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

EM address, for a relevant person who is, or may be, subject to an EM requirement for a residential requirement, means the residence in which the relevant person is to reside and remain in accordance with the residential requirement

EM requirement means a requirement (for a residential requirement, or for any other requirement imposed by a control order) of the kind stated in section 17(n) (*see also* the relevant person's obligations under section 17A)

EM requirement for a residential requirement means a requirement of the kind stated in section 17(n) and that requires the relevant person to—

- (a) submit to electronic monitoring of compliance with a residential requirement of the control order concerned; and
- (b) co-operate with, and comply with any lawful direction given by, Police; and
- (c) not tamper with or damage or do anything to interfere with the functioning of the electronic monitoring equipment; and
- (d) otherwise comply with their obligations under the EM requirement for the residential requirement (*see* section 17A)

engages in terrorism-related activities has the meaning in section 8(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

overturned, in section 28A(1), in relation to a conviction or sentence specified in section 6(5) or (6), has the meaning in section 28A(3) to (5)

post-detention conditions has the meaning in section 4(1) of the Sentencing Act 2002

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

release conditions, in relation to 1 or more sentences of imprisonment that are or include a determinate sentence of imprisonment referred to in section 6(5)(b) and (c), has the same meaning as in section 4(1) of the Parole Act 2002

relevant occupant means, for a residence that is or may be an EM address,—

- (a) if it is a family residence, every person of or over the age of 16 years who ordinarily lives there; and
- (b) if it is any other residence, every person whom the Commissioner or the chief executive of the Department of Corrections identifies as being a relevant occupant for the purposes of section 16D and clause 3 of Schedule 3

relevant offender means a person to whom section 6(5) or (6) applies (*see* section 6(1AA))

relevant person has the meaning in section 6(1AA)

relevant returner means a person to whom section 6(1) applies (*see* section 6(1AA))

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

residential requirement means a requirement of the kind stated in section 17(j)

sentence of home detention means a sentence of home detention imposed under section 80A of the Sentencing Act 2002

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

statutory release date, in relation to 1 or more sentences of imprisonment that are or include a determinate sentence of imprisonment referred to in section 6(5)(b) and (c), has the same meaning as 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

terrorism-related New Zealand offence has the meaning in section 8A.

Section 5 **community-based sentence**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **determinate sentence of imprisonment**: inserted, on 5 October 2021, by section 44(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5 **EM address**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **EM requirement**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **EM requirement for a residential requirement**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **overturned**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **post-detention conditions**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **release conditions**: inserted, on 5 October 2021, by section 44(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5 **relevant occupant**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **relevant offender**: inserted, on 5 October 2021, by section 44(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5 **relevant offender**: amended, on 10 May 2023, by section 26(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **relevant person**: amended, on 5 October 2021, by section 44(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5 **relevant returner**: inserted, on 5 October 2021, by section 44(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5 **residential requirement**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **sentence of home detention**: inserted, on 10 May 2023, by section 26(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 5 **statutory release date**: inserted, on 5 October 2021, by section 44(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5 **terrorism-related New Zealand offence**: inserted, on 5 October 2021, by section 44(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

6 Meaning of relevant person

Definition: relevant returner or relevant offender

(1AA) A **relevant person** means a person who is—

- (a) a person to whom subsection (1) applies (and who, in this Act, is called, under section 5, a relevant returner); or
- (b) a person to whom subsection (5) or (6) applies (and who, in this Act, is called, under section 5, a relevant offender).

Engagement in terrorism-related activities in foreign country

(1) This subsection applies to 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 8(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.

Commission of terrorism-related New Zealand offence punished by determinate sentence of imprisonment

- (5) This subsection applies to a person who is 18 years old or older and—
 - (a) who, on or after 5 October 2021 (which is the commencement date of the Counter-Terrorism Legislation Act 2021), committed, and was convicted of, a terrorism-related New Zealand offence (*see* section 8A); and
 - (b) who was sentenced, on or after that commencement date, for that offence, to a determinate sentence of imprisonment; and
 - (c) whose statutory release date, or whose last day as an offender who is subject to release conditions, for 1 or more sentences of imprisonment that are or include that determinate sentence of imprisonment, is after that commencement date.

Commission of terrorism-related New Zealand offence punished by sentence of home detention or community-based sentence

- (6) This subsection applies to a person who is 18 years old or older and—
 - (a) who, on or after the commencement date of the Counter-Terrorism Acts (Designation and Control Orders) Amendment Act 2023, committed, and was convicted of, a terrorism-related New Zealand offence (*see* section 8A); and
 - (b) who was sentenced, on or after that commencement date, for that offence, to a sentence of home detention or a community-based sentence; and
 - (c) whose last day as an offender who is subject to that sentence of home detention (including while subject to post-detention conditions), or that community-based sentence, is after that commencement date.

Effect of appeal against conviction or sentence

- (7) Subsections (5) and (6) apply (subject to section 28A (discharge if conviction or sentence overturned on criminal appeal)) even if—
- (a) the convicted person or a prosecutor has appealed against the conviction or sentence; and
 - (b) the sentence is suspended, or ceases to run, because of the filing of a notice of appeal or application for leave to appeal.

Section 6(1AA) heading: inserted, on 5 October 2021, by section 45(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6(1AA): inserted, on 5 October 2021, by section 45(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6(1AA)(b): amended, on 10 May 2023, by section 27(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 6(1) heading: inserted, on 5 October 2021, by section 45(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6(1): amended, on 5 October 2021, by section 45(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6(5) heading: inserted, on 5 October 2021, by section 45(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6(5): inserted, on 5 October 2021, by section 45(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6(5)(a): amended, on 10 May 2023, by section 27(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 6(6) heading: inserted, on 10 May 2023, by section 27(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 6(6): inserted, on 10 May 2023, by section 27(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 6(7) heading: inserted, on 10 May 2023, by section 27(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 6(7): inserted, on 10 May 2023, by section 27(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

7 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(1), 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.

Section 7(1): amended, on 5 October 2021, by section 46 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

8 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

8A Meaning of terrorism-related New Zealand offence

(1) A **terrorism-related New Zealand offence** means an offence that is—

- (a) an offence against the Terrorism Suppression Act 2002 (even if that offence was committed wholly, or partly, outside New Zealand, but is prosecuted in New Zealand under any of sections 15 to 18 of that Act and sections 7, 8, and 8A of the Crimes Act 1961); or
- (b) an offence—
 - (i) against section 124(1), 127(4), 129(3), or 131A(1) of the Films, Videos, and Publications Classification Act 1993, or section 390 of the Customs and Excise Act 2018; and

- (ii) that involves a specified objectionable publication.
- (2) In this section, **specified objectionable publication** means a publication that is objectionable (as those terms are defined in sections 2 and 3 of the Films, Videos, and Publications Classification Act 1993 (the **FVPC Act**)) for reasons that are or include all or any of the following:

Publication deemed objectionable under section 3(2) of FVPC Act

- (a) the publication promotes or supports, or tends to promote or support, acts of torture or the infliction of extreme violence or extreme cruelty (as provided in section 3(2)(f) of the FVPC Act):

Publication determined objectionable under section 3(3) of FVPC Act

- (b) the extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty (as provided in section 3(3)(a)(i) of the FVPC Act):
- (c) the extent and degree to which, and the manner in which, the publication promotes or encourages acts of terrorism (as provided in section 3(3)(d) of the FVPC Act).

Section 8A: inserted, on 5 October 2021, by section 47 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8A(1)(b)(ii): replaced, on 10 May 2023, by section 28(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 8A(2): inserted, on 10 May 2023, by section 28(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

9 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

10 Transitional, savings, and related provisions

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

11 Act binds the Crown

This Act binds the Crown.

Part 2

Control orders

Making and content

12 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(1AA), 7, 8, and 8A); 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 their ability to comply with any conditions of any sentence they are serving, order they are subject to, or relevant conditions imposed upon them; 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 17 and with the limits in sections 18, 19, and 20.

Section 12(1)(a): amended, on 5 October 2021, by section 48 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 12(3)(a): amended, on 10 May 2023, by section 29 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

13 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 25).

Application

14 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 15(2)(a) or (b) or 16A(2).
- (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).

Section 14(2)(b): amended, on 10 May 2023, by section 30 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

15 Application for interim control order in respect of relevant returner

- (1) The Commissioner may make an application for an interim control order in respect of a relevant returner only if—
 - (a) the application is made—

- (i) before the relevant returner arrives in New Zealand; or
 - (ii) within 12 months after the relevant returner 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 returner 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 returner if the application is made before the relevant returner arrives in New Zealand, 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 returner 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 returner if—
 - (i) the application is made after the relevant returner 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 returner 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 returner, 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 returner, the court must consider whether to direct under section 16(1)(b) a period (longer or shorter than 3 months after the date on which the interim order was served on the relevant returner) as the period within which the Commissioner may make an application for a final control order in respect of the relevant returner.

Section 15 heading: amended, on 5 October 2021, by section 49(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(1): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(1)(a)(i): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(1)(a)(ii): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(1)(b): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(2)(a): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(2)(a)(ii): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(2)(b): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(2)(b)(i): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(2)(b)(ii): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(3): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 15(5): amended, on 5 October 2021, by section 49(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

16 Application for final control order in respect of relevant returner

- (1) The Commissioner may make an application for a final control order in respect of a relevant returner only if—
 - (a) no interim control order in respect of the relevant returner has been applied for, and the application for the final control order is made after, and within 12 months after, the relevant returner arrives in New Zealand; or
 - (b) an interim control order in respect of the relevant returner was applied for and made, and the application for the final control order is made after the relevant returner arrives in New Zealand and—
 - (i) within 3 months after the date on which the interim order was served on the relevant returner; 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 returner was applied for and declined, and the application for the final control order is made after, and within 12 months after, the relevant returner 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 returner; 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 returner, the documents to be served must exclude any information supporting the application that is not disclosable supporting information.

Section 16 heading: amended, on 5 October 2021, by section 50(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16(1): amended, on 5 October 2021, by section 50(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16(1)(a): amended, on 5 October 2021, by section 50(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16(1)(b): amended, on 5 October 2021, by section 50(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16(1)(b)(i): amended, on 5 October 2021, by section 50(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16(1)(c): amended, on 5 October 2021, by section 50(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16(2)(a): amended, on 5 October 2021, by section 50(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16(3): amended, on 5 October 2021, by section 50(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

16A Application for interim control order in respect of relevant offender

- (1) The Commissioner may make an application for an interim control order in respect of a relevant offender only if—
- (a) the application is made—
 - (i) after they become a relevant offender; and
 - (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in section 6(5)(c) or, as the case requires, on or before their last day as an offender who is subject to the sentence of home detention (including while subject to post-detention conditions), or the community-based sentence, mentioned in section 6(6)(c); 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 offender of engagement in terrorism-related activities in a country.
- (2) The application for the interim control order may be made, and must be heard and determined by the court, without notice to the relevant offender if the Commissioner believes on reasonable grounds that it is necessary and appropri-

ate 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 offender 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 offender, 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 offender, the court must consider whether to direct under section 16B(1)(b) a period (longer or shorter than 3 months after the date on which the interim order was served on the relevant offender) as the period within which the Commissioner may make an application for a final control order in respect of the relevant offender.

Section 16A: inserted, on 5 October 2021, by section 51 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16A(1)(a)(ii): amended, on 10 May 2023, by section 31 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

16B Application for final control order in respect of relevant offender

- (1) The Commissioner may make an application for a final control order in respect of a relevant offender only if—
 - (a) no interim control order in respect of the relevant offender has been applied for, and the application for the final control order is made—
 - (i) after they become a relevant offender; and
 - (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in section 6(5)(c) or, as the case requires, on or before their last day as an offender who is subject to the sentence of home detention (including while subject to post-detention conditions), or the community-based sentence, mentioned in section 6(6)(c); or
 - (b) an interim control order in respect of the relevant offender was applied for and made, and the application for the final control order is made—
 - (i) within 3 months after the date on which the interim order was served on the relevant offender; 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 offender was applied for and declined, and the application for the final control order is made—
- (i) after they become a relevant offender; and
 - (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in section 6(5)(c) or, as the case requires, on or before their last day as an offender who is subject to the sentence of home detention (including while subject to post-detention conditions), or the community-based sentence, mentioned in section 6(6)(c); and
 - (iii) 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 offender; 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 offender, the documents to be served must exclude any information supporting the application that is not disclosable supporting information.

Section 16B: inserted, on 5 October 2021, by section 51 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 16B(1)(a)(ii): amended, on 10 May 2023, by section 32 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 16B(1)(c)(ii): amended, on 10 May 2023, by section 32 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

16C Report on whether EM requirement practicable and appropriate

- (1) If the requirements of a control order sought are or include an EM requirement (*see* section 14(4)), the application for the order must be accompanied by a report on whether an EM requirement is practicable and appropriate.
- (2) The report must address whether an EM requirement is practicable and appropriate, including—
- (a) whether the monitoring equipment will function adequately; and
 - (b) if the report relates only or in part to an EM requirement for a residential requirement, complying with section 16D.
- (3) The report may also address any of the following matters:
- (a) the relevant person's circumstances, including their employment, training, and childcare commitments; and

- (b) any other matter that is or may be relevant to whether (and if so, on what terms, and any conditions) a control order should impose an EM requirement.

Compare: 2000 No 38 s 30F

Section 16C: inserted, on 10 May 2023, by section 33 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

16D EM address for EM requirement for residential requirement

- (1) In preparing a report under section 16C relating only or in part to an EM requirement for a residential requirement, the Commissioner or the chief executive of the Department of Corrections must ascertain the following:
 - (a) whether the proposed EM address is appropriate for electronic monitoring of the relevant person, including whether there is any evidence of violence between—
 - (i) the relevant person and any occupant of that address; and
 - (ii) the relevant person and any person who may reasonably be expected to visit that address:
 - (b) after following the steps set out in subsection (2), whether the relevant occupants consent to the relevant person remaining at the EM address with an EM requirement for a residential requirement.
- (2) Before ascertaining whether or not a relevant occupant consents, the Commissioner or the chief executive of the Department of Corrections must—
 - (a) ensure that the occupant—
 - (i) is aware of the nature of the circumstances that may lead to the relevant person becoming subject to an EM requirement for a residential requirement; and
 - (ii) is aware of the nature of any past offending by the relevant person; and
 - (iii) is aware of and understands the effects of an EM requirement for a residential requirement; and
 - (b) inform the occupant that the information in paragraph (a) is given to the occupant to enable them to make an informed decision whether to consent to the relevant person remaining at the EM address with an EM requirement for a residential requirement; and
 - (c) inform the occupant that the information in paragraph (a) must be used only for the purpose of making the decision referred to in paragraph (b); and
 - (d) inform the occupant that consent to the relevant person remaining at the EM address with an EM requirement for a residential requirement can be

withdrawn at any time and inform the occupant how they may withdraw their consent.

Compare: 2000 No 38 s 30G

Section 16D: inserted, on 10 May 2023, by section 33 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

16E Use of information obtained for report

- (1) The uses to which information obtained for the purpose of preparing a report under section 16C may be put are the following:
 - (a) use in the determination of the application to which the report relates:
 - (b) any use to which the relevant person has consented:
 - (c) any other use that is or may be necessary for the purposes of this Act.
- (2) That information may not be used except in accordance with subsection (1).

Compare: 2000 No 38 s 30H

Section 16E: inserted, on 10 May 2023, by section 33 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Requirements that may be imposed

17 Requirements that may be imposed

A control order may impose on a relevant person only requirements that do all or any of the following:

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 Inter-

net (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):

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 (except as authorised by or under section 18) between specified times each day, or on specified days (*see also* section 18):
- (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 complies with their other obligations under section 17A (*see also* section 19(1)):
- (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 20):
- (q) require that the relevant person comply with any requirements that are not of a kind specified in paragraphs (a) to (p), that are specified in the

order, and that are imposed under section 12(2)(b) and (c) and (3) for (as the case requires)—

- (i) the main purposes stated in section 3(a) and (b); or
- (ii) 1 or both of the incidental purposes stated in section 3(c).

Section 17(j): amended, on 10 May 2023, by section 34(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 17(n): replaced, on 10 May 2023, by section 34(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 17(q): inserted, on 10 May 2023, by section 34(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

17A Relevant person's obligations under EM requirement

Obligations under any EM requirement

- (1) A relevant person who is subject to a control order with an EM requirement must—
 - (a) submit to electronic monitoring of compliance with the requirements of the control order concerned (*see* section 17(n)); and
 - (b) co-operate with, and comply with any lawful direction given by, Police; and
 - (c) not tamper with or damage or do anything to interfere with the functioning of the electronic monitoring equipment.

Obligations under EM requirement for residential requirement

- (2) A relevant person who is subject to a control order with an EM requirement for a residential requirement must (as well as complying with their obligations under subsection (1))—
 - (a) not leave the EM address at any time except as authorised by or under section 18; and
 - (b) remain in the area of the EM address that has been defined under clause 3 of Schedule 3, except as authorised by or under section 18; and
 - (c) present themselves at the door of the EM address when required to do so by a constable.

Breach

- (3) A breach by a relevant person of an obligation under subsection (1) or (2) is a breach of the EM requirement (*see* section 32).

Section 17A: inserted, on 10 May 2023, by section 35 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Limits on requirements

18 Limits on residential requirement

Daily limit on residential requirement

- (1) No residential requirement can require the relevant person to remain at a specified address for more than 12 hours in any 24-hour period.

Authorised absences: general

- (2) A residential requirement does not prevent the relevant person from leaving a specified address—
- (a) as authorised under subsection (3) or (5); or
 - (b) to seek urgent medical or dental treatment; or
 - (c) to avoid or minimise a serious risk of death or injury to the relevant person or any other person; or
 - (d) to surrender themselves to Police custody.

Authorised absences: court-authorised absences

- (3) A court imposing a residential requirement can authorise the relevant person to be absent from a specified address.
- (4) In authorising a relevant person to be absent from the specified address, the court must specify—
- (a) the time or times during which the relevant person may be absent; and
 - (b) the purpose or purposes for which the relevant person may be absent.

Authorised absences: Police-authorised absences

- (5) In addition to absences authorised under subsection (3), if the relevant person is subject to a residential requirement (whether or not the relevant person is also subject to an EM requirement for a residential requirement), a constable who is of or above the level of position of inspector may authorise the relevant person to be absent from the specified address with or without a specified purpose for any or all days remaining to be served under the order.

Further provision if EM requirement for residential requirement

- (6) If the relevant person is, or is to be, also subject to an EM requirement for a residential requirement,—
- (a) a specified address under section 17(j) must be the same as the EM address;
 - (b) references in subsections (1) to (5) to a, or the, specified address include a reference to the area defined under clause 3 of Schedule 3.

Compare: 2000 No 38 s 30M

Section 18: replaced, on 10 May 2023, by section 36 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

19 Limits on EM requirement*Limit on any EM requirement*

- (1) An EM requirement requires (*see* section 17(n)) the relevant person—
 - (a) to submit to electronic monitoring of compliance with the requirements of the control order concerned; and
 - (b) to comply with their other obligations under section 17A.
- (2) An EM requirement may be imposed by a control order only—
 - (a) under section 12(2)(b) or (c); and
 - (b) for the relevant purposes mentioned in section 12(2)(b) or (c).
- (3) The court must not impose an EM requirement if the court considers that a less restrictive requirement or combination of requirements would be sufficient to achieve—
 - (a) the main purposes stated in section 3(a) and (b); and (if applicable)
 - (b) 1 or both of the incidental purposes stated in section 3(c).
- (4) The court must not impose an EM requirement unless the court is satisfied on reasonable grounds that the relevant person has been made aware of and understands their obligations under the EM requirement (*see* section 17A).
- (5) In considering whether (and if so, on what terms, and any conditions) to impose an EM requirement, the court—
 - (a) must consider the report referred to in section 16C; and
 - (b) may have regard to any other relevant information.

Limits on EM requirement for residential requirement

- (6) In imposing an EM requirement for a residential requirement, a court must specify the EM address (*see also* sections 17(j) and 18(6)(a)).
- (7) The court must not impose an EM requirement for a residential requirement unless the court is satisfied on reasonable grounds (*see also* section 16D) that—
 - (a) the proposed EM address is appropriate for the purpose of a control order with an EM requirement for a residential requirement:
 - (b) it is practicable for the relevant person to remain at the proposed EM address:
 - (c) every relevant occupant of the proposed EM address has consented to the relevant person remaining at the proposed EM address with an EM requirement for a residential requirement:
 - (d) the consent of the relevant occupant has been obtained after the steps set out in section 16D(2) have been followed.

Compare: 2000 No 38 ss 30C, 30I, 30J

Section 19: replaced, on 10 May 2023, by section 36 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

20 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 17(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 32 (offence to breach requirements).

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

Management of EM requirement

Heading: inserted, on 10 May 2023, by section 37 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

20A Management of EM requirement

An EM requirement, if imposed, is managed under Schedule 3.

Section 20A: inserted, on 10 May 2023, by section 37 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Service

21 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 P is a relevant returner, and if practicable, on P's arrival in New Zealand; or
 - (b) if P is a relevant returner, and 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, or commission of, 1 or both of the following:
- (a) the same terrorism-related activities in a foreign country or, as the case requires, the same terrorism-related New Zealand offence:
- (b) later and different terrorism-related activities in a foreign country or, as the case requires, a later and different terrorism-related New Zealand offence.

Section 21(2)(a): replaced, on 5 October 2021, by section 52(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 21(2)(b): replaced, on 5 October 2021, by section 52(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 21(3): amended, on 10 May 2023, by section 38 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 21(3)(a): amended, on 5 October 2021, by section 52(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 21(3)(b): amended, on 5 October 2021, by section 52(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

22 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 12(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 25(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 16(1)(b) or 16B(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.

Section 22(i)(ii): amended, on 10 May 2023, by section 39 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

23 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

24 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.

25 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 require-

- ments, and *see also* section 13(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 16(1)(b) or 16B(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 13(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.
 - (4A) Those 2 years exclude, for a final control order in respect of a relevant offender, any period on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in section 6(5)(c).
 - (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 28.
 - (6) A final control order expires (subject to earlier variation, discharge, or expiry of the order or its requirements and to section 26(2)) at the end of its duration.
 - (7) However, the expiry of a final control order does not prevent another control order being applied for and made in respect of the same relevant person, but based on—
 - (a) engagement in later and different terrorism-related activities in a foreign country; or
 - (b) commission of a later and different terrorism-related New Zealand offence.

Section 25(1)(b): amended, on 5 October 2021, by section 53(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 25(4A): inserted, on 5 October 2021, by section 53(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 25(6): replaced, on 10 May 2023, by section 40 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 25(7): inserted, on 10 May 2023, by section 40 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

26 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 can be renewed if it has expired under—
 - (a) section 28B (expiry if relevant person recalled to prison and remains in prison because of that recall for at least 2 years); or
 - (b) section 29 (expiry if relevant person sentenced to long-term sentence).
- (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 14(1) to (3), 16(1), and 16B(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.

Section 26(4): replaced, on 10 May 2023, by section 41(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 26(7): amended, on 10 May 2023, by section 41(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

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

27 Variation or discharge

- (1) The court may 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.
- (2) 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.
- (3) In deciding 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.
- (4) 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.

- (5) However, sections 14(1) to (3) and 16(1) do not apply to the application or own-initiative decision.
- (6) No variation of a control order can extend the duration of the control order under section 25.
- (7) 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.

28 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 in a prison on a recall; 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

Section 28(1)(a): amended, on 10 May 2023, by section 42 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

28A Discharge if conviction or sentence overturned on criminal appeal

When control order discharged

- (1) A control order made in respect of a relevant offender is discharged if, on a criminal appeal by the offender or by a prosecutor, the conviction or sentence specified in section 6(5) or (6) is overturned.
- (2) The control order is discharged regardless of whether the relevant person is a relevant person in reliance on section 6(7).

When conviction overturned

- (3) The conviction is **overturned** if it is set aside—
 - (a) without an order for retrial; or
 - (b) with a retrial being ordered but—
 - (i) not being proceeded with; or
 - (ii) not resulting in a conviction specified in section 6(5) or (6); or
 - (iii) being ended by a stay of proceedings.

When sentence overturned

- (4) The sentence is **overturned** if—
 - (a) it is set aside or remitted; and
 - (b) another sentence (whether more or less severe) specified in section 6(5) or (6) is not imposed (by an appeal court or by the sentencing court) on the offender for the relevant offence.
- (5) The sentence is also **overturned** if—
 - (a) it, or any part of it, or any condition of it, is varied (by an appeal court); and
 - (b) because of that variation, the sentence imposed on the offender for the relevant offence is not a sentence specified in section 6(5) or (6).

Section 28A: inserted, on 10 May 2023, by section 43 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

28B Expiry if relevant person recalled to prison and remains in prison because of that recall for at least 2 years

- (1) This section applies if, while a relevant person is subject to a control order, the relevant person is recalled to prison and remains in prison because of that recall (and not because of any later recall to prison of that relevant person) for at least 2 years.
- (2) The control order and its requirements expire, and the control order cannot be replaced by a final control order or renewed.
- (3) However, the expiry of the control order does not prevent another control order being applied for and made in respect of the same relevant person, but based on—
 - (a) engagement in later and different terrorism-related activities in a foreign country; or
 - (b) commission of a later and different terrorism-related New Zealand offence.

Section 28B: inserted, on 10 May 2023, by section 43 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

29 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.
- (3) However, the expiry of the control order does not prevent another control order being applied for and made in respect of the same relevant person, but based on—

- (a) engagement in later and different terrorism-related activities in a foreign country; or
- (b) commission of a later and different terrorism-related New Zealand offence.

Section 29(2): replaced, on 10 May 2023, by section 44 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 29(3): inserted, on 10 May 2023, by section 44 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Appeals

30 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

31 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.

32 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

33 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.
- (3A) The court may make an order that permits the publication—
 - (a) on its own initiative; or
 - (b) on an application for the purpose made by the Commissioner or by the person.
- (3B) In particular, the court may make an order that permits the publication—
 - (a) on an application for the purpose made by the Commissioner, if—
 - (i) the Commissioner has made, without notice to the person, an application for a control order in respect of the person; and
 - (ii) the court has not yet heard or finally determined the application for the control order in respect of the person:
 - (b) on an application for the purpose made by the Commissioner or by the person, if—
 - (i) the Commissioner has made, on notice to the person, an application for a control order in respect of the person; and
 - (ii) the court has not yet heard or finally determined the application for the control order in respect of the person.
- (4) The court may make an order that permits the publication—
 - (a) only if satisfied that permitting the publication is consistent with the purposes of this section; and
 - (b) if the order is made on an application by the person, only if satisfied that the person understands the nature and effect of their decision to apply for the order.

- (5) 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.
- (5A) For the purposes of subsection (5)(a), the ground in section 21(1)(i) of the Human Rights Act 1993 must be taken to be “age, which means any age commencing with the age of 16 years”.
- (6) 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.
- (7) 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.
- (8) 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

Section 33(3A): inserted, on 10 May 2023, by section 45(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 33(3B): inserted, on 10 May 2023, by section 45(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 33(4): replaced, on 10 May 2023, by section 45(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 33(5A): inserted, on 10 May 2023, by section 45(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

34 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 33.
- (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 33.

- (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

35 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.

36 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

37 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

38 Review of Act

- (1) The Minister must, as soon as practicable after the second anniversary of the day on which the Counter-Terrorism Legislation Act 2021 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

Section 38(1): amended, on 5 October 2021, by section 55 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 1 Transitional, savings, and related provisions

s 10

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.

Part 2 Provisions relating to Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023

Schedule 1 Part 2: inserted, on 10 May 2023, by section 46(a) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

2 Definitions

In this Part,—

Amendment Act means the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023

commencement means the commencement of the Amendment Act.

Schedule 1 clause 2: inserted, on 10 May 2023, by section 46(a) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

3 Pre-commencement residential requirements or EM requirements

Sections 16C to 16E, 17(j) and (n), 17A, 18, 19, and 20A apply, after the commencement, to a requirement—

- (a) of the kind stated in section 17(j) or (n); and
- (b) in a control order made before the commencement; and
- (c) if the order and requirement are in force after the commencement.

Schedule 1 clause 3: inserted, on 10 May 2023, by section 46(a) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

4 Effect of appeal against conviction or sentence

Sections 6(7) and 28A apply only to—

- (a) an application for a control order made after the commencement;
- (b) a control order made after the commencement.

Schedule 1 clause 4: inserted, on 10 May 2023, by section 46(a) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

5 Expiry if relevant person recalled to prison and remains in prison because of that recall for at least 2 years

Section 28B applies, after the commencement, to a control order—

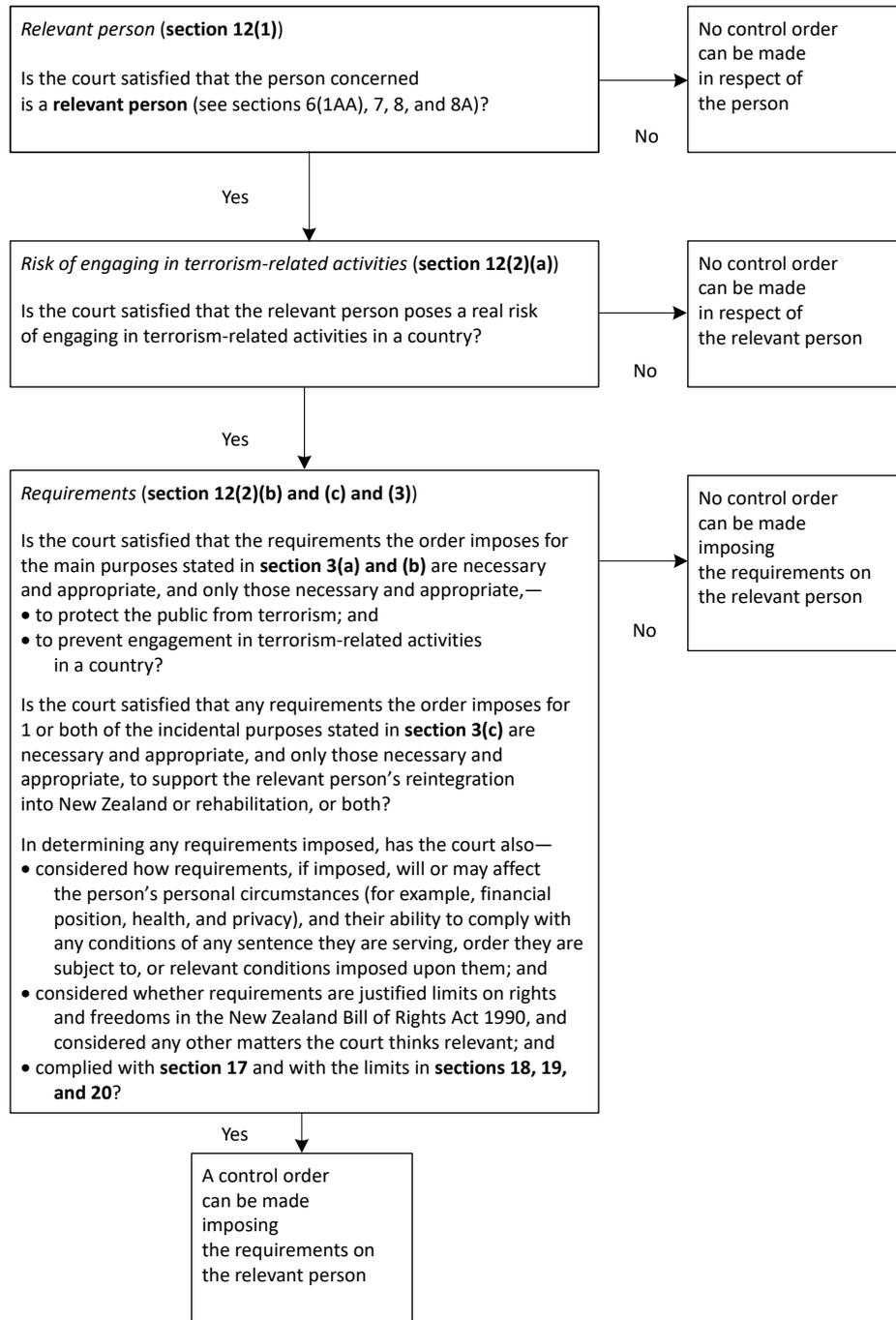
- (a) made before or after the commencement; and
- (b) in force after the commencement.

Schedule 1 clause 5: inserted, on 10 May 2023, by section 46(a) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Schedule 2

Overview of decisions in making control order

s 4



Schedule 2: amended, on 10 May 2023, by section 47 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Schedule 2: amended, on 5 October 2021, by section 56 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 3

Management of EM requirement

s 20A

Schedule 3: inserted, on 10 May 2023, by section 48 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

1 Responsibility for management of EM requirement

- (1) The Minister of Justice, in consultation with the Minister of Police and the Minister of Corrections, may, by notice in writing, nominate 1 or both of the following as the person or persons responsible for the management of an EM requirement for a residential requirement:
 - (a) the Commissioner;
 - (b) the chief executive of the Department of Corrections.
- (2) The person or persons nominated under subclause (1)—
 - (a) is or are responsible for the management of the EM requirement; and
 - (b) may authorise their respective employees to carry out any functions related to all or any of the following:
 - (i) applying for a control order that would impose the EM requirement;
 - (ii) managing the EM requirement (including, without limitation, authorising absences under section 18(5));
 - (iii) applying for the EM requirement to be varied or discharged.
- (3) The Minister of Justice may make a nomination under subclause (1) from time to time, and, in consultation with the Minister of Police and the Minister of Corrections, may revoke a nomination by notice in writing to the person or persons concerned.

Compare: 2000 No 38 s 30E

Schedule 3 clause 1: inserted, on 10 May 2023, by section 48 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

2 Use of information obtained

Information that is obtained from the electronic monitoring of a relevant person with a control order with an EM requirement for a residential requirement may be used for any of the following purposes:

- (a) verifying compliance by the relevant person with the requirements of the order;
- (b) detecting non-compliance by the relevant person with requirements of the order and providing evidence of that non-compliance;
- (c) detecting the commission by the relevant person of an offence and providing evidence of that offence;

- (d) verifying that the relevant person has not tampered with or damaged or done anything to interfere with the functioning of the electronic monitoring equipment;
- (e) achieving the relevant purposes mentioned in section 12(2)(b) or (c).

Compare: 2000 No 38 s 30O

Schedule 3 clause 2: inserted, on 10 May 2023, by section 48 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

3 Commissioner or chief executive of the Department of Corrections must define area of EM address to which relevant person is confined

- (1) The Commissioner or the chief executive of the Department of Corrections must define the area of an EM address to which a relevant person with an EM requirement for a residential requirement is confined.
- (2) After defining the area of an EM address under subclause (1), the Commissioner or the chief executive of the Department of Corrections must—
 - (a) show the area to the relevant person; and
 - (b) ensure that the relevant occupants are advised of the area.

Compare: 2000 No 38 s 30K

Schedule 3 clause 3: inserted, on 10 May 2023, by section 48 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Notes

1 *General*

This is a consolidation of the Terrorism Suppression (Control Orders) Act 2019 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18): Part 2

Counter-Terrorism Legislation Act 2021 (2021 No 37): Part 2 subpart 2