

**Counter-Terrorism Acts (Designations and Control
Orders) Amendment Bill**

Government Bill

As reported from the committee of the whole House

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Orders) Amendment Bill**

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

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Hon Kiritapu Allan

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Contents

		Page
1	Title	4
2	Commencement	4
Part 1		
Amendments to Terrorism Suppression Act 2002		
3	Principal Act	4
4	Section 4 amended (Interpretation)	4
5	Section 23 amended (Further provisions relating to final designation)	4
6	Section 30 amended (Information available to Prime Minister)	5
7	Section 35 amended (Designations under section 22 to expire after 3 years unless renewed by Prime Minister)	5
8	New sections 35A to 35G and cross-headings inserted	5
<i>Effect on final designation if entity imprisoned</i>		
35A	Effect on final designation if entity imprisoned	5
35B	Certain revocation applications stopped	5
35C	Duration of designation extended (3-year period until expiry paused)	5
35D	Periodic review whether designation no longer justified	5
35E	Periodic review: when designation no longer justified	6
35F	Periodic review: procedure	6
35G	Definition: when entity is imprisoned	6
<i>Classified security information, and notification</i>		

Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill

9	Section 42 amended (Notification of revocation, expiry, or invalidity of designations)	7
10	Section 59 amended (Discharge of order under section 55 on appeal)	7
11	Schedule 1AA amended	7
	<i>Consequential amendment to Security Information in Proceedings Act 2022</i>	
11A	Principal Act	7
11B	Section 4 amended (Interpretation)	7
	<i>Consequential amendments to Security Information in Proceedings (Repeals and Amendments) Act 2022</i>	
11C	Principal Act	8
11D	Section 71 amended (New section 29D inserted (Notification of decisions about expiry or revocation of designations))	8
11E	Section 73 replaced	8
	73 Section 30 amended (Information available to Prime Minister)	8
11F	Section 74 amended (New sections 31 and 31A and cross-heading inserted)	8
11G	New section 76A inserted (New section 34 inserted (Proceedings involving classified security information))	9
	76A New section 34 inserted (Proceedings involving classified security information)	9
11H	New sections 78A to 78E inserted	9
	78A Section 35B amended (Certain revocation applications stopped)	10
	78B Section 35C amended (Duration of designation extended (3-year period until expiry paused))	10
	78C Section 35D amended (Periodic review whether designation no longer justified)	10
	78D Section 35F amended (Periodic review: procedure)	10
	78E Cross-heading below section 35G repealed	10
11I	Section 79 replaced (Section 38 replaced (Procedure in proceedings involving classified security information))	10
	79 Section 38 repealed (Procedure in proceedings involving classified security information)	10
11J	Section 81 amended (Section 42 amended (Notification of revocation, expiry, or invalidity of designations))	10
11K	Section 81A inserted (Section 56 amended (Notice of application under section 55))	10
	81A Section 56 amended (Notice of application under section 55)	11

Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill

11L	Section 82 amended (Section 58 amended (Appeal against decision on application under section 55))	11
11M	Schedule 6 amended	11

**Part 2
Amendments to Terrorism Suppression (Control Orders)
Act 2019**

12	Principal Act	11
13	Section 5 amended (Interpretation)	11
14	Section 6 amended (Meaning of relevant person)	12
15	Section 8A amended (Meaning of terrorism-related New Zealand offence)	13
16	Section 12 amended (Power to make)	14
17	Section 14 amended (Application required)	14
18	Section 16A amended (Application for interim control order in respect of relevant offender)	14
19	Section 16B amended (Application for final control order in respect of relevant offender)	14
19A	New sections 16C to 16E inserted	14
	16C Report on whether EM requirement practicable and appropriate	14
	16D EM address for EM requirement for residential requirement	15
	16E Use of information obtained for report	16
20	Section 17 amended (Requirements that may be imposed)	16
20A	New section 17A inserted	16
	17A Relevant person's obligations under EM requirement	16
21	Sections 18 and 19 replaced	17
	18 Limits on residential requirement	17
	19 Limits on EM requirement	18
22	New section 20A and cross-heading inserted	19
	<i>Management of EM requirement</i>	
	20A Management of EM requirement	19
23	Section 21 amended (Service of control order)	19
24	Section 22 amended (Information to be served with interim control order made without notice)	19
25	Section 25 amended (Duration)	19
26	Section 26 amended (Renewal)	20
27	Section 28 amended (Suspension)	20
28	New sections 28A and 28B inserted	20
	28A Discharge if conviction or sentence overturned on criminal appeal	20
	28B Expiry if relevant person recalled to prison and remains in prison because of that recall for at least 2 years	21

Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill	
cl 1	
29	Section 29 amended (Expiry if relevant person sentenced to long-term sentence) 21
30	Section 33 amended (Automatic suppression of identity of relevant person) 21
31	Schedule 1 amended 22
32	Schedule 2 amended 22
33	New Schedule 3 inserted 22
	Schedule 1 23
	Transitional, savings, and related provisions
	Schedule 2 27
	New Schedule 3 of Terrorism Suppression (Control Orders) Act 2019

The Parliament of New Zealand enacts as follows:

- 1 Title**
- This Act is the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act **2022**.
- 2 Commencement** 5
- (1) This Act comes into force on the day after the date of Royal assent.
- (2) **Section 11B** of this Act amends the Security Information in Proceedings Act 2022 on this Act’s commencement, but that Act as amended by this Act commences under section 2(1)(a) or (b) of that Act.
- (3) **Sections 11D to 11M** of this Act amend the Security Information in Proceedings (Repeals and Amendments) Act 2022 on this Act’s commencement, but that Act as amended by this Act commences under section 2(1)(a) or (b) of that Act. 10

- Part 1**
- Amendments to Terrorism Suppression Act 2002** 15
- 3 Principal Act**
- This **Part** amends the Terrorism Suppression Act 2002.
- 4 Section 4 amended (Interpretation)**
- In section 4(1), insert in its appropriate alphabetical order:
- imprisoned**, in relation to an entity, has, in **sections 35A to 35E** (and in **Part 2** of Schedule 1AA), the meaning given to it in **section 35G** 20
- 5 Section 23 amended (Further provisions relating to final designation)**
- In section 23(h), after “section 34”, insert “or **35D**”.

6	Section 30 amended (Information available to Prime Minister) In section 30,— (a) replace “or to revoke” with “, revoke, or renew”; and (b) replace “or section 22 or section 34,” with “, 22, 34, 35, or 35D ”.	
7	Section 35 amended (Designations under section 22 to expire after 3 years unless renewed by Prime Minister) In section 35(1)(a), after “section 34”, insert “or 35D ”.	5
8	New sections 35A to 35G and cross-headings inserted After section 35, insert:	
	<i>Effect on final designation if entity imprisoned</i>	10
35A	Effect on final designation if entity imprisoned <i>When sections 35B to 35F apply</i> (1) Sections 35B to 35F apply if an entity is for the time being— (a) the subject of a designation made under section 22 as— (i) a terrorist entity; or (ii) an associated entity; and (b) imprisoned (as defined in section 35G). <i>When imprisonment starts does not matter</i> (2) Sections 35B to 35F apply whether the entity starts to be imprisoned before, at, or after 1 or both of— (a) the time when the designation takes effect: (b) the time when the last renewal (if any) of the designation takes effect.	15
35B	Certain revocation applications stopped While the entity is imprisoned, no application for revocation of the designation can be made under section 34(1)(a) or (b) on the ground specified in section 34(3)(b).	20
35C	Duration of designation extended (3-year period until expiry paused) (1) While the entity is imprisoned, any incomplete 3-year period, or further 3-year period, under section 35, for expiry of the designation, does not run or end. (2) When the entity ceases to be imprisoned, that period, or further period, resumes, and the designation may expire (if it is not renewed under section 35).	25
35D	Periodic review whether designation no longer justified (1) The Prime Minister must, at least once every 3 years while the entity is imprisoned, review the designation and decide whether it is no longer justified.	30

- (2) The Prime Minister must revoke under this section a designation that they decide under this section is no longer justified (*see also* sections 23(h) and 42).
- 35E Periodic review: when designation no longer justified**
- (1) The Prime Minister may decide a designation is no longer justified under **section 35D** only if satisfied that none of its effects is necessary or desirable for the prevention, or other suppression, of terrorism. 5
- (2) **Subsection (1)** applies regardless of whether, at all or any times while imprisoned, the entity is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation under section 22.
- 35F Periodic review: procedure** 10
- For a review under **section 35D**, the Prime Minister—
- (a) must take reasonable steps to allow the following to make available relevant information:
- (i) the entity; and
- (ii) a third party with an interest in the designation that, in the Prime Minister’s opinion after having regard to section 34(2), is an interest apart from any interest in common with the public; and 15
- (b) must take into account any relevant information made available in response to those steps; and
- (c) may take into account any other relevant information, including classified security information (*see also* section 30). 20
- 35G Definition: when entity is imprisoned**
- Definition*
- (1) For **sections 35A to 35E**, an entity is **imprisoned** only if the entity— 25
- Prisoner under Corrections Act 2004*
- (a) is in the legal custody under the Corrections Act 2004 of—
- (i) the chief executive (as defined in section 3(1) of that Act); or
- (ii) the Commissioner of Police; or
- Arrested and detained or sentenced for armed forces discipline*
- (b) is arrested and detained under the Armed Forces Discipline Act 1971 pending release or trial; or 30
- (c) is a service detainee or a service prisoner (as those terms are defined in section 4 of the Prisoners’ and Victims’ Claims Act 2005).
- When entity may be in specified legal custody under Corrections Act 2004*
- (2) **Subsection (1)(a)** applies, without limiting the generality of that provision, if the entity is in the legal custody specified in that provision and— 35

<p>(a) is detained for the purposes of any remand pending or during trial or sentence in the District Court or High Court; or</p> <p>(ab) is detained in a prison as a young person (aged 17 years), pending hearing in the Youth Court, and under an order made under section 238(1)(f) of the Oranga Tamariki Act 1989; or</p> <p>(b) is serving a sentence of imprisonment (for example, is serving a sentence of imprisonment as a young person—</p> <p style="padding-left: 2em;">(i) detained under that sentence in a prison or in a Police jail under section 34(1) or (2) of the Corrections Act 2004; and so</p> <p style="padding-left: 2em;">(ii) not detained under that sentence in a residence under section 34A(1) of that Act); or</p> <p>(c) is detained under the Immigration Act 2009 (for example, pending deportation); or</p> <p>(d) is detained under the Extradition Act 1999 (for example, pending the surrender of the entity to the extradition country).</p> <p><i>Meaning of young person</i></p> <p>(3) In this section, young person means a young person within the meaning given in section 2(1) of the Oranga Tamariki Act 1989.</p> <p style="text-align: center;"><i>Classified security information, and notification</i></p> <p>9 Section 42 amended (Notification of revocation, expiry, or invalidity of designations)</p> <p>In section 42(1), replace “or section 35” with “, 35, or 35D, 35D”.</p> <p>10 Section 59 amended (Discharge of order under section 55 on appeal)</p> <p>In section 59(2), after “section 34”, insert “or 35D”.</p> <p>11 Schedule 1AA amended</p> <p>In Schedule 1AA,—</p> <p>(a) insert the Part set out in Part 1 of Schedule 1 of this Act as the last Part; and</p> <p>(b) make all necessary consequential amendments.</p> <p style="text-align: center;"><i>Consequential amendment to Security Information in Proceedings Act 2022</i></p> <p>11A Principal Act</p> <p>Section 11B amends the Security Information in Proceedings Act 2022.</p> <p>11B Section 4 amended (Interpretation)</p> <p>In section 4, definition of security information or SI, paragraph (a)(i) <u>paragraph (a)(iv)</u>, replace “38” with “34”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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*Consequential amendments to Security Information in Proceedings
(Repeals and Amendments) Act 2022*

11C Principal Act

Sections 11D to 11M amend the Security Information in Proceedings (Repeals and Amendments) Act 2022. 5

11D Section 71 amended (New section 29D inserted (Notification of decisions about expiry or revocation of designations))

- (1) In section 71, before new section 29D(1), insert:

Expiry or revocation of designation

- (2) In section 71, new section 29D(1), replace “or 29C” with “, 29C, or **35D**”. 10

- (3) In section 71, before new section 29D(2), insert:

Decision to decline application for revocation of designation

- (4) In section 71, after new section 29D(3), insert:

*Decision under **section 35D** that designation continues to be justified*

- (4) If the Prime Minister decides that the result of a review under **section 35D** is that the designation continues to be justified, the Prime Minister must take all reasonable steps to ensure that notice of the result of the review is given to ~~the~~ ~~the~~ the designated entity or a representative of the designated entity (in the prescribed manner and form (if any)) with all reasonable speed. 15

- (5) If the Prime Minister relied on classified security information in deciding that the result of a review under **section 35D** is that the designation continues to be justified, the notice must state that— 20

(a) the Prime Minister relied on that kind of information; and

(b) the entity may request that a summary of the classified security information be provided to them under section 31. 25

11E Section 73 replaced

Replace section 73 with:

73 Section 30 amended (Information available to Prime Minister)

In section 30, replace “34, 35,” with “29B, 29C,”.

11F Section 74 amended (New sections 31 and 31A and cross-heading inserted) 30

- (1) In section 74, new section 31(1), replace “or 29D(3)(b)” with “, ~~29D(3)(b)~~ or section 29D(3)(b) or (5)(b)”.

- (2) In section 74, replace new section 31(1)(b) with:

(b) to decline an application for revocation of a designation under section 29C; or 35

(c)	the result of a review under section 35D is that the designation continues to be justified.	
(3)	In section 74, replace new section 31A(1)(b) with:	
(b)	to decline an application for revocation of a designation under section 29C; or	5
(c)	the result of a review under section 35D is that the designation continues to be justified.	
11G	New section 76A inserted (New section 34 inserted (Proceedings involving classified security information))	
	After section 76, insert:	10
76A	New section 34 inserted (Proceedings involving classified security information)	
	After section 33, insert:	
34	Proceedings involving classified security information	
(1)	This section applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act.	15
(2)	If the Crown proposes to present classified security information in proceedings, the Attorney-General must—	
(a)	make an application to an authorised court under section 32 of the 2022 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and	20
(b)	submit to the court the certification described in section 4A(1)(b).	
(3)	If the classified security information is also national security information, the Crown may submit with the application and certification referred to in subsection (2) an NSI certificate under section 41 of the 2022 Act and seek a security information order as set out in section 36(3) of that Act (under which the types of orders available to the court are limited).	25
(4)	In this section,—	
	2022 Act means the Security Information in Proceedings Act 2022	30
	authorised court, national security information, NSI certificate, and security information order have the meanings given to them in section 4 of the 2022 Act.	
11H	New sections 78A to 78E inserted	
	After section 78, insert:	35

- 78A Section 35B amended (Certain revocation applications stopped)**
In **section 35B**, replace “section 34(1)(a) or (b) on the ground specified in section 34(3)(b)” with “section 29C(1)(a) or (b) on the ground specified in section 29C(3)(b)”.
- 78B Section 35C amended (Duration of designation extended (3-year period until expiry paused))** 5
In **section 35C(1) and (2)**, replace “35” with “29B”.
- 78C Section 35D amended (Periodic review whether designation no longer justified)**
In **section 35D(2)**, replace “42” with “29D”. 10
- 78D Section 35F amended (Periodic review: procedure)**
In **section 35F(a)(ii)**, replace “34(2)” with “29C(2)”.
- 78E Cross-heading below section 35G repealed**
Repeal the cross-heading below **section 35G**.
- 11I Section 79 replaced (Section 38 replaced (Procedure in proceedings involving classified security information))** 15
Replace section 79 with:
- 79 Section 38 repealed (Procedure in proceedings involving classified security information)**
Repeal section 38. 20
- 11J Section 81 amended (Section 42 amended (Notification of revocation, expiry, or invalidity of designations))**
- (1) In the heading to section 81, replace “**amended**” with “**renumbered as section 35 and repositioned**”.
- (2) Before section 81(1), insert: 25
(1AAA) Renumber section 42 as section 35 and reposition it after **section 34** (as inserted by **section 76A** of this Act).
- (3) Replace section 81(2) with:
- (2) In section 42(1), replace “expires or is revoked or is found to be or to have been invalid, under section 34, 35, or **35D**” with “is found to have been invalid”. 30
- 11K Section 81A inserted (Section 56 amended (Notice of application under section 55))**
After section 81, insert:

- 81A Section 56 amended (Notice of application under section 55)**
In section 56(4), replace “38” with “**34**”.
- 11L Section 82 amended (Section 58 amended (Appeal against decision on application under section 55))**
In section 82, replace “section 38” with “**section 34**”. 5
- 11M Schedule 6 amended**
- (1) In Schedule 6, new clause 3 of Schedule 1AA, definition of “**relevant action**”, delete “decisions of the Prime Minister”.
- (2) In Schedule 6, new clause 3 of Schedule 1AA, definition of “**relevant action**”, after paragraph (d), insert: 10
- (e) a decision of the Prime Minister that the result of a review under **section 35D** is that a designation continues to be justified.
- (3) In Schedule 6, new clause 3 of Schedule 1AA, replace the definition of **section 38 proceedings** with: 15
- section 34 proceedings** means proceedings to which **section 34** apply applies.
- (4) In Schedule 6, new clause 5(1) and (2) of Schedule 1AA, replace “38” with “**34**”.
- (5) In Schedule 6, new clause 5(3) of Schedule 1AA, replace “Section 38 proceedings commenced before the commencement date, and” with “Proceedings to which section 38 (as in force before the commencement date) applied, and that were”. 20

Part 2

Amendments to Terrorism Suppression (Control Orders) Act 2019

- 12 Principal Act** 25
This **Part** amends the Terrorism Suppression (Control Orders) Act 2019.
- 13 Section 5 amended (Interpretation)**
- (1) In section 5, insert in their appropriate alphabetical order: 30
- community-based sentence** has the meaning in section 44 of the Sentencing Act 2002
- 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
- (aa) co-operate with, and comply with any lawful direction given by, Police; and
- (b) not ~~tamper with, or damage,~~ tamper with or damage or do anything to interfere with the functioning of the electronic monitoring equipment; and
- (c) otherwise comply with their obligations under the EM requirement for the residential requirement (*see* **section 17A**)

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

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**

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

- (2) In section 5, definition of **relevant offender**, after “section 6(5)”, insert “or **(6)**”.

14 Section 6 amended (Meaning of relevant person)

- (1) In section 6(1AA)(b), after “subsection (5)”, insert “or **(6)**”.
- (2) In section 6(5)(a), replace “the commencement date of the Counter-Terrorism Legislation Act 2021” with “5 October 2021 (which is the commencement date of the Counter-Terrorism Legislation Act 2021)”.
- (3) After section 6(5), insert:

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 **2022**, committed, and was convicted of, a terrorism-related New Zealand offence (*see* section 8A); and 5
 - (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 10
 - (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— 15
- (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. 20

15 Section 8A amended (Meaning of terrorism-related New Zealand offence)

- (1) Replace section 8A(b)(ii) with:
- (ii) that involves a specified objectionable publication.
- (2) In section 8A, insert as subsection (2):
- (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: 25
- 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): 30
- 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): 35

- (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).

16 Section 12 amended (Power to make)

In section 12(3)(a), after “privacy”, insert “, 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”. 5

17 Section 14 amended (Application required)

In section 14(2)(b), after “section 15(2)(a) or (b)”, insert “or 16A(2)”. 5

18 Section 16A amended (Application for interim control order in respect of relevant offender) 10

In section 16A(1)(a)(ii), after “section 6(5)(c)”, insert “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)**”. 15

19 Section 16B amended (Application for final control order in respect of relevant offender)

In section 16B(1)(a)(ii) and (c)(ii), after “section 6(5)(c)”, insert “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)**”. 20

19A New sections 16C to 16E inserted

After section 16B, insert:

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. 25
- (2) The report must address whether an EM requirement is practicable and appropriate, including— 30
- (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: 35
- (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

16D EM address for EM requirement for residential requirement 5

- (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— 10
 - (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. 15
- (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— 20
 - (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 25
 - (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 30
 - (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. 35

Compare: 2000 No 38 s 30G

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: 5
 - (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

20 Section 17 amended (Requirements that may be imposed)

- (1) In section 17(j), after “to remain at that address”, insert “(except as authorised by or under **section 18**)”.

- (2) Replace section 17(n) with:

- (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)*): 15

- (3) After section 17(p), insert:

- (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)— 20
 - (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).

20A New section 17A inserted

After section 17, insert: 25

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 30
 - (b) co-operate with, and comply with any lawful direction given by, Police; and
 - (c) not ~~tamper with, or damage, tamper with or damage~~ or do anything to interfere with the functioning of the electronic monitoring equipment. 35

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 5
 - (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. 10

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).

21 Sections 18 and 19 replaced 15

Replace sections 18 and 19 with:

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. 20

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 25
 - (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. 30
- (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. 35

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. 5

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,— 10
- (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 15

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 20
- (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— 25
- (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**). 30
- (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 35
- (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

22 New section 20A and cross-heading inserted

After section 20, insert:

Management of EM requirement

- 20A Management of EM requirement** 20
An EM requirement, if imposed, is managed under **Schedule 3**.

23 Section 21 amended (Service of control order)

In section 21(3), after “engagement in”, insert “, or commission of”.

24 Section 22 amended (Information to be served with interim control order made without notice) 25

In section 22(i)(ii), after “section 16(1)(b)”, insert “or 16B(1)(b)”.

25 Section 25 amended (Duration)

Replace section 25(6) with:

- (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. 30
- (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 35

(b)	commission of a later and different terrorism-related New Zealand offence.	
26	Section 26 amended (Renewal)	
(1)	Replace section 26(4) with:	
(4)	No control order can be renewed if it has expired under—	5
(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).	
(2)	In section 26(7), replace “and 16(1)” with “, 16(1), and 16B(1)”.	
27	Section 28 amended (Suspension)	10
	In section 28(1)(a), after “on remand”, insert “, or in a prison on a recall”.	
28	New sections 28A and 28B inserted	
	After section 28, insert:	
28A	Discharge if conviction or sentence overturned on criminal appeal	
	<i>When control order discharged</i>	15
(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) .	20
	<i>When conviction overturned</i>	
(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	25
(ii)	not resulting in a conviction specified in section 6(5) or (6) ; or	
(iii)	being ended by a stay of proceedings.	
	<i>When sentence overturned</i>	
(4)	The sentence is overturned if—	
(a)	it is set aside or remitted; and	30
(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) .	
28B	Expiry if relevant person recalled to prison and remains in prison because of that recall for at least 2 years	5
(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.	10
(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—	15
(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.	
29	Section 29 amended (Expiry if relevant person sentenced to long-term sentence)	20
	Replace section 29(2) with:	
(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—	25
(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.	30
30	Section 33 amended (Automatic suppression of identity of relevant person)	
(1)	Replace section 33(4) with:	
(3A)	The court may make an order that permits the publication—	
(a)	on its own initiative; or	35
(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: 5
- (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. 10
- (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. 15
- (2) After section 33(5), insert:
- (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”. 20

31 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in **Part 2 of Schedule 1** of this Act as the last Part; and 25
- (b) make all necessary consequential amendments.

32 Schedule 2 amended

In Schedule 2, after “privacy”, insert “, 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”. 30

33 New Schedule 3 inserted

After Schedule 2, insert the **Schedule 3** set out in **Schedule 2** of this Act.

Schedule 1
Transitional, savings, and related provisions

ss 11, 31

Part 1

New Part 2 of Schedule 1AA of Terrorism Suppression Act 2002 5

Part 2

Provisions relating to Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2022

3 Definitions

In this Part,— 10

Amendment Act means the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act **2022**

commencement means the commencement of the Amendment Act

imprisoned, in relation to an entity, has the meaning given to it in **section 35G** 15

new sections means—

- (a) section 30 (as amended by the Amendment Act); and
- (b) **sections 35A to 35G** (as inserted by the Amendment Act)

refusal, of a revocation application, includes, without limitation, a failure or refusal to decide the application 20

revocation application means an application—

- (a) for revocation of the designation of an entity who, at any time or times before the commencement, was for the time being—
 - (i) the subject of a designation made under section 22 as—
 - (A) a terrorist entity; or 25
 - (B) an associated entity; and
 - (ii) imprisoned; and
- (b) made under section 34(1)(a) or (b); and
- (c) made on the ground specified in section 34(3)(b).

4 New sections apply to designations in force after commencement 30

The new sections apply, after the commencement, to a designation in force after the commencement, regardless of whether the commencement is before, at, or after—

(a)	the time when the designation takes effect:	
(b)	the time when the last renewal (if any) of the designation takes effect:	
(c)	the time when the entity starts to be imprisoned.	
5	New sections also apply to revocation applications made, but not withdrawn or determined, before commencement	5
(1)	The new sections also apply, after the commencement, to a revocation application if the application—	
(a)	is made before the commencement; and	
(b)	is not withdrawn, or determined, before the commencement.	
(2)	In particular, after the commencement, section 35B applies to the application as if it were a purported revocation application that—	10
(a)	was made on or after the commencement; and	
(b)	need not be decided because of section 35B .	
(3)	This clause does not limit how section 35B affects a purported revocation application made on or after the commencement.	15
(3)	<u>This clause does not limit how section 35B affects a purported application made on or after the commencement for revocation of the designation of an entity who, at any time or times before, on, or after the commencement, was for the time being—</u>	
(a)	<u>the subject of a designation made under section 22 as—</u>	20
(i)	<u>a terrorist entity; or</u>	
(ii)	<u>an associated entity; and</u>	
(b)	<u>imprisoned.</u>	
(4)	Subclause (3) applies whether the purported application was made—	
(a)	<u>under section 34(1)(a) or (b), on the ground specified in section 34(3)(b), and before the Security Information in Proceedings (Repeals and Amendments) Act 2022 comes into force; or</u>	25
(b)	<u>under section 29C(1)(a) or (b), on the ground specified in section 29C(3)(b), and when or after the Security Information in Proceedings (Repeals and Amendments) Act 2022 comes into force.</u>	30
6	Validation of pre-commencement refusals of revocation applications	
(1)	This clause makes valid, from when it was made, a refusal of a revocation application if—	
(a)	the application was made, determined, and refused before the commencement; and	35
(b)	the refusal is invalid.	

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- (2) This clause applies even if the refusal, its making, or both is or are the subject of any judicial review, or other proceedings before a court,—
- (a) commenced before the commencement; and
 - (b) not finally determined (including any rehearing, retrial, or appeal) before the commencement.
- (3) **Subclause (2)** does not limit **subclause (1)**.

5

Part 2
New Part 2 of Schedule 1 of Terrorism Suppression (Control Orders) Act 2019

Part 2		
Provisions relating to Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2022		5
2	Definitions	
	In this Part,—	
	Amendment Act means the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2022	10
	commencement means the commencement of the Amendment Act.	
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	15
	(b) in a control order made before the commencement; and	
	(c) if the order and requirement are in force after the commencement.	
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:	20
	(b) a control order made after the commencement.	
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	25
	(b) in force after the commencement.	

Schedule 2
New Schedule 3 of Terrorism Suppression (Control Orders) Act 2019

s 33

Schedule 3
Management of EM requirement

5

s 20A

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: 10
- (a) the Commissioner;
 - (b) the chief executive of the Department of Corrections.
- (2) The person or persons nominated under **subclause (1)**— 15
- (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: 20
 - (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)**); 20
 - (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. 25

Compare: 2000 No 38 s 30E

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: 30
- (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: 35

(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 otherwise interfered with or damaged or done anything to interfere with the functioning of the electronic monitoring equipment:	5
(e)	achieving the relevant purposes mentioned in section 12(2)(b) or (c).	
	Compare: 2000 No 38 s 30O	
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.	10
(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	15
(b)	ensure that the relevant occupants are advised of the area.	
	Compare: 2000 No 38 s 30K	

Legislative history

20 October 2022	Introduction (Bill 176–1)
26 October 2022	First reading and referral to Justice Committee
13 March 2023	Reported from Justice Committee (Bill 176–2)
4 April 2023	Second reading
2 May 2023	Committee of the whole House (Bill 176–3)