

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

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

The Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill seeks to clarify and strengthen New Zealand's counter-terrorism legislation to better prevent and respond to terrorism and associated activities. It would amend the Terrorism Suppression Act 2002 and the Terrorism Suppression (Control Orders) Act 2019.

Part 1 of the bill would amend the designation scheme in the Terrorism Suppression Act. The scheme enables the Prime Minister to designate an individual or a group as a terrorist entity.

The bill would clarify how this scheme applies to individuals who have been designated as terrorist entities and who are imprisoned. It would make clear that the following applies while the individual is imprisoned:

- an application could not be made to revoke the individual's designation on the ground that they were no longer involved in the acts that led to (or would lead to) designation
- expiry of the designation would be paused
- the Prime Minister would be required to review, every three years, whether the designation is no longer justified.

For the provisions of this bill to apply to an individual, the reasons for their imprisonment need not relate to their designation as a terrorist entity.

Part 2 of the bill would amend the Terrorism Suppression (Control Orders) Act. These changes would:

- include a broader range of objectionable publications in the eligibility test for a control order
- enable a control order to cover individuals sentenced to home detention or a community-based sentence
- enable a control order and sentence conditions to apply concurrently
- give judges more discretion when imposing control order requirements
- make name suppression requirements more flexible
- introduce new protocols for managing electronic monitoring of an individual subject to a control order.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Clarifying the meaning of imprisonment

Clause 8 would insert new sections 35A to 35G into the Terrorism Suppression Act. New sections 35A to 35F would clarify how the Act applies to individuals who are designated as terrorist entities and who are imprisoned.

New section 35G(1) would define the term “imprisoned” for an individual designated as a terrorist entity. It would include young people (aged 14 to 17) serving a sentence of imprisonment in an Oranga Tamariki residence, or in a prison.

We believe that the definition of imprisonment in the bill should only apply to young people in the custody of the Department of Corrections or the Police.

We understand that the provisions of this bill are intended to apply to individuals whose actions are sufficiently limited by imprisonment that it would be difficult for the Prime Minister to gauge whether their designation remained necessary to prevent further terrorist acts. We note that youth in Oranga Tamariki residences have greater access to unmonitored phone calls, letters, and visits, and greater scope to visit whānau outside, than those in a prison.

We believe that Oranga Tamariki youth justice residences are not so restricted as to pose challenges for the Prime Minister in considering whether an individual's designation remained necessary to prevent further terrorist acts. We therefore recommend

the removal of section 35G(1)(d). We also recommend inserting new section 35(G)(2)(ab) and amending section 35(G)(2)(b). These amendments would make it clear that young people are only covered by the provisions of this bill if they are detained by the Department of Corrections or the Police.

Amendments to Security Information in Proceedings Acts

Since this bill was introduced, two other statutes have been enacted that amend the Terrorism Suppression Act. They are the Security Information in Proceedings Act 2022 and the Security Information in Proceedings (Repeals and Amendments) Act 2022. These Acts will come into force in late 2023 unless an Order in Council brings them into force earlier.

The Security Information in Proceedings (Repeals and Amendments) Act made several changes to the process for making or revoking terrorist entity designations. These changes allow a designated person to request and receive a summary of any classified information used against them.

We recommend inserting new clause 11D to amend section 71 of the Security Information in Proceedings (Repeals and Amendments) Act. The new provision would apply the same right to a summary of classified information when a designation was being reviewed periodically. Specifically, this would mean that:

- when a designation is reviewed under the Terrorism Suppression Act and is found to be justified, an individual designated as a terrorist entity must be notified if classified information was used to make this determination
- if a summary is requested this must be provided, in a format agreed by the chief executive who provided the information to the Prime Minister
- the requirement to provide a summary can be waived if the chief executive and the Prime Minister are satisfied it is not possible to produce a meaningful summary without disclosing classified information
- the chief executive would be required to notify the Inspector-General of Intelligence and Security that a summary was being provided.

Making this change would align the process for the periodic review of a designation with that undertaken when refusing an application to revoke a designation.

We also recommend inserting new clauses 11A to 11C and 11E to 11M into the bill. These clauses would amend the Security Information in Proceedings Act and the Security Information in Proceedings (Repeals and Amendments) Act, respectively. Our amendments would ensure that when the two Acts come into force, their provisions would correctly apply to the Terrorism Suppression Act as amended by this bill.

Clarifying electronic monitoring requirements

Schedule 2 of the bill would insert new Schedule 3 into the Terrorism Suppression (Control Orders) Act. Schedule 3 would establish provisions relating to the electronic monitoring of an individual who has had a requirement for electronic monitoring imposed as a condition of a control order.

We believe that some provisions relating to the creation of control orders are more suitably placed in the body of the bill. We therefore recommend inserting new clause 19A, which would insert new sections 16C to 16D into the Terrorism Suppression (Control Orders) Act. These new provisions relate to making a control order, and are currently located in proposed Schedule 3. Our amendments to section 19 would place the limits on the use of electronic monitoring in the body of the bill.

We also recommend inserting clause 20A, new section 17A, to move the obligations on an individual who is subject to electronic monitoring from proposed Schedule 3 to the body of the bill.

Consequently we recommend removing the corresponding provisions from Schedule 3.

We note that currently the authority for electronic monitoring of terrorist entities lies solely with the Commissioner of Police. However, in practice, the responsibility for electronic monitoring is shared by the Police and the Department of Corrections. Because of this, we recommend adding references to the Chief Executive of the Department of Corrections throughout the bill. This change would ensure that the Department of Corrections would have the appropriate legislative authority to undertake this electronic monitoring.

Appendix

Committee process

The Counter-Terrorism Acts (Designation and Control Orders) Amendment Bill was referred to the committee on 26 October 2022.

We called for submissions on the bill with a closing date of 23 November 2022. We received and considered written submissions from 210 interested groups and individuals. We heard oral evidence from 4 submitters by videoconference.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Vanushi Walters (Chairperson)

Hon Ginny Andersen (Chairperson until 1 February 2023, member until 8 February 2023)

Hon Paul Goldsmith

Dr Emily Henderson

Anahila Kanongata'a-Suisuiki (from 8 February 2023)

Marja Lubeck (from 8 February 2023)

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Hon Willow-Jean Prime (until 8 February 2023)

Arena Williams

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

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kiritapu Allan

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

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	28B	Expiry if relevant person recalled to prison <u>and remains in prison because of that recall</u> for at least 2 years
29		Section 29 amended (Expiry if relevant person sentenced to long-term sentence)
30		Section 33 amended (Automatic suppression of identity of relevant person)
31		Schedule 1 amended
32		Schedule 2 amended
33		New Schedule 3 inserted
		Schedule 1
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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**
 - (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.

- Part 1**
Amendments to Terrorism Suppression Act 2002
- 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**

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	5
	(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 ”.	
8	New sections 35A to 35G and cross-headings inserted	10
	After section 35, insert:	
	<i>Effect on final designation if entity imprisoned</i>	
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—	15
(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>	20
(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.	
35B	Certain revocation applications stopped	25
	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).	
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.	30
(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).	

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.
- (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). 5

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.
- (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. 10

35F Periodic review: procedure

For a review under **section 35D**, the Prime Minister—

- (a) must take reasonable steps to allow the following to make available relevant information: 15
 - (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 20
- (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).

35G Definition: when entity is imprisoned 25

Definition

- (1) For **sections 35A to 35E**, an entity is **imprisoned** only if the entity—

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 30
 - (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
 - (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); or 35

	<i>Young person detained under sentence of imprisonment in residence</i>	
	(d) is a young person who is serving a sentence of imprisonment and (under section 34A of the Corrections Act 2004) is detained under that sentence in a residence approved by—	
	(i) the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; and	5
	(ii) the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Corrections Act 2004.	
	<i>When entity may be in specified legal custody under Corrections Act 2004</i>	10
(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—	
	(a) is detained for the purposes of any remand pending or during trial or sentence <u>in the District Court or High Court; or</u>	
	(ab) <u>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</u>	15
	(b) is serving a sentence of imprisonment; or (for example, is serving a sentence of imprisonment as a young person—	
	(i) <u>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</u>	20
	(ii) <u>not detained under that sentence in a residence under section 34A(1) of that Act); or</u>	
	(c) is detained under the Immigration Act 2009 (for example, pending deportation); or	25
	(d) is detained under the Extradition Act 1999 (for example, pending the surrender of the entity to the extradition country).	
	<i>Meaning of young person</i>	
(3)	<u>In this section, young person means a young person within the meaning given in section 2(1) of the Oranga Tamariki Act 1989.</u>	30
	<i>Classified security information, and notification</i>	

- 9 **Section 42 amended (Notification of revocation, expiry, or invalidity of designations)**
- In section 42(1), replace “or section 35” with “, 35, or **35D**”.
- 10 **Section 59 amended (Discharge of order under section 55 on appeal)** 35
- In section 59(2), after “section 34”, insert “or **35D**”.

11	Schedule 1AA amended	
	In Schedule 1AA,—	
	(a) insert the Part set out in Part 1 of Schedule 1 of this Act as the last Part; and	
	(b) make all necessary consequential amendments.	5
	<i>Consequential amendment to Security Information in Proceedings Act 2022</i>	
11A	Principal Act	
	Section 11B amends the Security Information in Proceedings Act 2022.	
11B	Section 4 amended (Interpretation)	
	In section 4, definition of security information or SI , paragraph (a)(i), replace “38” with “ 34 ”.	10
	<i>Consequential amendments to Security Information in Proceedings (Repeals and Amendments) Act 2022</i>	
11C	Principal Act	
	Sections 11D to 11M amend the Security Information in Proceedings (Repeals and Amendments) Act 2022.	15
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:	
	<i>Expiry or revocation of designation</i>	20
(2)	In section 71, new section 29D(1), replace “or 29C” with “, 29C, or 35D ”.	
(3)	In section 71, before new section 29D(2), insert:	
	<i>Decision to decline application for revocation of designation</i>	
(4)	In section 71, after section 29D(3), insert:	
	<i>Decision under section 35D that designation continues to be justified</i>	25
(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 designated entity or a representative of the designated entity (in the prescribed manner and form (if any)) with all reasonable speed.	30
(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—	
	(a) the Prime Minister relied on that kind of information; and	

	(b) <u>the entity may request that a summary of the classified security information be provided to them under section 31.</u>	
11E	<u>Section 73 replaced</u> <u>Replace section 73 with:</u>	
73	<u>Section 30 amended (Information available to Prime Minister)</u> <u>In section 30, replace “34, 35,” with “29B, 29C,”.</u>	5
11F	<u>Section 74 amended (New sections 31 and 31A and cross-heading inserted)</u>	
(1)	<u>In section 74, new section 31(1), replace “or 29D(3)(b)” with “, 29D(3)(b) or (5)(b)”.</u>	
(2)	<u>In section 74, replace new section 31(1)(b) with:</u>	10
	(b) <u>to decline an application for revocation of a designation under section 29C; or</u>	
	(c) <u>the result of a review under section 35D is that the designation continues to be justified.</u>	
(3)	<u>In section 74, replace new section 31A(1)(b) with:</u>	15
	(b) <u>to decline an application for revocation of a designation under section 29C; or</u>	
	(c) <u>the result of a review under section 35D is that the designation continues to be justified.</u>	
11G	<u>New section 76A inserted (New section 34 inserted (Proceedings involving classified security information))</u>	20
	<u>After section 76, insert:</u>	
76A	<u>New section 34 inserted (Proceedings involving classified security information)</u> <u>After section 33, insert:</u>	25
34	<u>Proceedings involving classified security information</u>	
(1)	<u>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.</u>	
(2)	<u>If the Crown proposes to present classified security information in proceedings, the Attorney-General must—</u>	30
	(a) <u>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</u>	
	(b) <u>submit to the court the certification described in section 4A(1)(b).</u>	35

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(3)	If the classified security information is also national security information, the Crown may submit with the application and certification referred to in sub-section (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).	5
(4)	In this section,— 2022 Act means the Security Information in Proceedings Act 2022 authorised court, national security information, NSI certificate, and security information order have the meanings given to them in section 4 of the 2022 Act.	10
11H	<u>New sections 78A to 78E inserted</u>	
	After section 78, insert:	
78A	<u>Section 35B amended (Certain revocation applications stopped)</u> 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)”.	15
78B	<u>Section 35C amended (Duration of designation extended (3-year period until expiry paused))</u> In section 35C(1) and (2) , replace “35” with “29B”.	
78C	<u>Section 35D amended (Periodic review whether designation no longer justified)</u> In section 35D(2) , replace “42” with “29D”.	20
78D	<u>Section 35F amended (Periodic review: procedure)</u> In section 35F(a)(ii) , replace “34(2)” with “29C(2)”.	
78E	<u>Cross-heading below section 35G repealed</u> Repeal the cross-heading below section 35G .	25
11I	<u>Section 79 replaced (Section 38 replaced (Procedure in proceedings involving classified security information))</u> Replace section 79 with:	
79	<u>Section 38 repealed (Procedure in proceedings involving classified security information)</u> Repeal section 38.	30

- 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: 5
- (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”. 10
- 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)** 15
- 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**”.
- 11M Schedule 6 amended** 20
- (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:
- (e) a decision of the Prime Minister that the result of a review under **section 35D** is that a designation continues to be justified. 25
- (3) In Schedule 6, new clause 3 of Schedule 1AA, replace the definition of **section 38 proceedings** with:
- section 34 proceedings** means proceedings to which **section 34** apply. 30
- (4) In Schedule 6, new clause 5(1) and (2) of Schedule 1AA, replace “38” with “**34**”.

Part 2

Amendments to Terrorism Suppression (Control Orders) Act 2019

- 12 Principal Act**
- This **Part** amends the Terrorism Suppression (Control Orders) Act 2019. 35

13 Section 5 amended (Interpretation)

- (1) In section 5, insert in their appropriate alphabetical order:

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) ~~to~~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 ~~to~~tamper with, or damage, or do anything to interfere with the functioning of the electronic monitoring equipment; and
- (c) ~~to~~otherwise comply with their obligations under the EM requirement for the residential requirement (*see* ~~clause 9 of Schedule 3~~**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)”. 5
- (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 10
 - (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 15
 - (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* 20
- (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. 25

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): 30
- (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 35
 - (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):

Part 2 cl 16	Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill	
	<i>Publication determined objectionable under section 3(3) of FVPC Act</i> (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).	5
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”.	10
17	Section 14 amended (Application required) In section 14(2)(b), after “section 15(2)(a) or (b)”, insert “or 16A(2)”.	
18	Section 16A amended (Application for interim control order in respect of relevant offender) 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 20
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)”.	25
19A	<u>New sections 16C to 16E inserted</u> After section 16B, insert:	
16C	<u>Report on whether EM requirement practicable and appropriate</u> (1) <u>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.</u> (2) <u>The report must address whether an EM requirement is practicable and appropriate, including—</u> (a) <u>whether the monitoring equipment will function adequately; and</u> (b) <u>if the report relates only or in part to an EM requirement for a residential requirement, complying with section 16D.</u>	30 35

- (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.

5

Compare: 2000 No 38 s 30F

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:

10

- (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

15

- (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.

20

- (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

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- (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

30

- (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

35

- (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

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

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) In section 17(n), replace “device (*see also* section 19)” with “equipment (*see also* ~~**sections 18(5) and (6), 19, and 20A**~~, and ~~**clauses 2(1), 6(1)(a), and 9 of Schedule 3**~~)”.

(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)**):

(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)—

- (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:

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) <u>co-operate with, and comply with any lawful direction given by, Police; and</u>	
	(c) <u>not tamper with, or damage, or do anything to interfere with the functioning of the electronic monitoring equipment.</u>	
	<i>Obligations under EM requirement for residential requirement</i>	5
(2)	<u>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))—</u>	
	(a) <u>not leave the EM address at any time except as authorised by or under section 18; and</u>	10
	(b) <u>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</u>	
	(c) <u>present themselves at the door of the EM address when required to do so by a constable.</u>	15
	<i>Breach</i>	
(3)	<u>A breach by a relevant person of an obligation under subsection (1) or (2) is a breach of the EM requirement (see section 32).</u>	
21	Sections 18 and 19 replaced	
	Replace sections 18 and 19 with:	20
18	Limits on residential requirement	
	<i>Daily limit on residential requirement</i>	
(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.	
	<i>Authorised absences: general</i>	25
(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	30
	(d) to surrender themselves to Police custody.	
	<i>Authorised absences: court-authorised absences</i>	
(3)	A court imposing a residential requirement can authorise the relevant person to be absent from a specified address.	35
(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 ~~(as defined in **clause 1 of Schedule 3**)~~;
 - (b) references in **subsections (1) to (5)** to a, or the, specified address include a reference to the area defined under **clause 83 of Schedule 3**.

Compare: 2000 No 38 s 30M

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).
- (43) ~~The court must not impose an EM requirement (for a residential requirement, or for any other requirement imposed by a control order) 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.	
	<i>Limits on EM requirement for residential requirement</i>	
(2)	An EM requirement for a residential requirement can be imposed only under Part 1 of Schedule 3.	5
(6)	In imposing an EM requirement for a residential requirement, a court must specify the EM address (<i>see also</i> 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 (<i>see also</i> section 16D) that—	10
	(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:	15
	(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	20

22 New section 20A and cross-heading inserted

After section 20, insert:

	<i>Management of EM requirement for residential requirement</i>	
20A	Management of EM requirement for residential requirement	
	An EM requirement for a residential requirement, if imposed, is managed under Part 2 of Schedule 3 .	25

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)

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.	35
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Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill	
Part 2 cl 26	
(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	5
(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—	10
(a) section 28B (expiry if relevant person recalled to prison <u>and remains in prison because of that recall</u> 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)	15
In section 28(1)(a), after “on remand”, insert “, or in a prison on a recall to prison for less than 2 years”.	
28 New sections 28A and 28B inserted	
After section 28, insert:	
28A Discharge if conviction or sentence overturned on criminal appeal	20
<i>When control order discharged</i>	
(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) .	25
<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—	30
(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.	
<i>When sentence overturned</i>	
(4) The sentence is overturned if—	35

	(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—	5
	(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 <u>and remains in prison because of that recall</u> for at least 2 years	10
(1)	This section applies if, while a relevant person is subject to a control order, the relevant person is recalled to prison <u>and remains in prison because of that recall (and not because of any later recall to prison of that relevant person)</u> for at least 2 years.	15
(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—	20
	(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)	25
	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—	30
	(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.	35
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
 - (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— 5
- (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: 10
 - (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. 15
- (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. 20
- (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”. 25

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 30
- (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”. 35

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,—

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**

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

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
 - (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

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
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	20
	(b) the refusal is invalid.	
(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.	25
(3)	Subclause (2) does not limit subclause (1) .	

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 <u>and remains in prison because of that recall</u> 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	
EM requirements for residential requirements	
	ss 18(6), 19, 20A
Part 1	
Limits on EM requirement for residential requirement	
1	Definitions: meanings of EM address and relevant occupant
	In this schedule, unless the context otherwise requires,—
	EM address , for a relevant person who is, or is to be, subject to an EM requirement for a residential requirement, means the residence in which the relevant person resides, or is to reside and remain in accordance with the residential requirement
	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 identifies as being a relevant occupant for the purposes of this Part.
2	Purpose of EM requirement for residential requirement
(1)	An EM requirement for a residential requirement requires (<i>see</i> section 17(n)) the relevant person—
	(a) to submit to electronic monitoring of compliance with the residential requirement; and
	(b) to comply with the relevant person's other obligations under clause 9 .
(2)	An EM requirement for a residential 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	Report on whether EM requirement for residential requirement practicable and appropriate
(1)	If the requirements of a control order sought are or include an EM requirement for a residential requirement (<i>see</i> section 14(4)), the application for the order must be accompanied by a report on whether an EM requirement for a residential requirement is practicable and appropriate.

- (2) The report must address the following matters:
- (a) ~~whether an EM requirement for a residential requirement is practicable at the proposed EM address, including whether the monitoring equipment will function adequately at that address:~~
 - (b) ~~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:~~
 - (c) ~~whether every relevant occupant at the proposed EM address has consented to the relevant person remaining at that address with an EM requirement for a residential requirement.~~
- (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 for a residential requirement.~~
- Compare: 2000 No 38 s 30F
- 4 Commissioner must ascertain whether relevant occupants consent to relevant person remaining at EM address with EM requirement for residential requirement**
- (1) In preparing a report under **clause 3**, the Commissioner must ascertain, after following the steps set out in **subclause (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 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; 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	
	(e) 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	5
	(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	10
5	Use of information obtained for report	
(1)	The uses to which information obtained for the purpose of preparing a report under clause 3 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:	15
	(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 subclause (1).	
	Compare: 2000 No 38 s 30H	
6	Court must be satisfied of specified matters before imposing EM requirement for residential requirement	20
(1)	The court must not impose an EM requirement for a residential requirement unless the court is satisfied on reasonable grounds that—	
	(a) the relevant person has been made aware of and understands their obligations under the EM requirement (<i>see clause 9</i>):	
	(b) it is practicable for the relevant person to remain at the proposed EM address:	25
	(c) the proposed EM address is appropriate for the purpose of a control order with an EM requirement for a residential requirement:	
	(d) 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:	30
	(e) in each case the consent of the relevant occupant has been obtained after the steps set out in clause 4 have been followed.	
(2)	In considering whether (and if so, on what terms, and any conditions) to impose an EM requirement for a residential requirement, the court—	35
	(a) must consider the report referred to in clause 3; and	
	(b) in particular, must have regard to any evidence of violence between the relevant person and any occupant of the proposed EM address; and	

(e) may have regard to any other relevant information.

Compare: 2000 No 38 s 30I

7 Court must specify EM address

In imposing an EM requirement for a residential requirement, a court must specify the EM address (as defined in **clause 1**, and *see also* sections 17(j) and **18(6)(a)**).

Compare: 2000 No 38 s 30J

Part 2

Management of EM requirement for residential requirement

8 Commissioner must define area of EM address to which relevant person is confined

(1) The Commissioner 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 must—

(a) show the area to the relevant person; and

(b) ensure that the relevant occupants (as defined in **clause 1**) are advised of the area.

Compare: 2000 No 38 s 30K

9 Relevant person's obligations under EM requirement for residential requirement

(1) A relevant person who is subject to a control order with an EM requirement for a residential requirement must—

(a) submit to electronic monitoring of compliance with the residential requirement of the control order concerned (*see* section 17(n)); and

(b) not leave the EM address at any time except as authorised by or under **section 18**; and

(c) remain in the area of the EM address that has been defined under **clause 8**, except as authorised by or under **section 18**; and

(d) co-operate with, and comply with any lawful direction given by, Police; and

(e) present themselves at the door of the EM address when required to do so by a constable; and

(f) allow Police access to the EM address for the purpose of speaking to another occupant of the EM address at the request of that occupant; and

(g) not tamper with, or damage, or do anything to interfere with the functioning of the electronic monitoring equipment.

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

Compare: 2000 No 38 s 30L

10 Responsibility for management of EM requirement for residential 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) 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

11 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 the purpose set out in **clause 2** and 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 otherwise interfered with the electronic monitoring equipment;

(e) achieving the relevant purposes mentioned in section 12(2)(b) or (c).

Compare: 2000 No 38 s 30G

Schedule 3

Management of EM requirement

s 20A

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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:

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- (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.

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(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.

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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:

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- (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;

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	(d) <u>verifying that the relevant person has not tampered with or otherwise interfered with the electronic monitoring equipment:</u>	
	(e) <u>achieving the relevant purposes mentioned in section 12(2)(b) or (c).</u>	
	<u>Compare: 2000 No 38 s 30O</u>	
3	<u>Commissioner or chief executive of the Department of Corrections must define area of EM address to which relevant person is confined</u>	5
(1)	<u>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.</u>	
(2)	<u>After defining the area of an EM address under subclause (1), the Commissioner or the chief executive of the Department of Corrections must—</u>	10
	(a) <u>show the area to the relevant person; and</u>	
	(b) <u>ensure that the relevant occupants are advised of the area.</u>	
	<u>Compare: 2000 No 38 s 30K</u>	

Legislative history

20 October 2022
26 October 2022

Introduction (Bill 176–1)
First reading and referral to Justice Committee