



Prevention of Terrorism Act 2005

2005 CHAPTER 2

Appeals and other proceedings

10 Appeals relating to non-derogating control orders

- (1) Where—
 - (a) a non-derogating control order has been renewed, or
 - (b) an obligation imposed by such an order has been modified without the consent of the controlled person,the controlled person may appeal to the court against the renewal or modification.
- (2) In the case of an appeal against a renewal with modifications, the appeal may include an appeal against some or all of the modifications.
- (3) Where an application is made by the controlled person to the Secretary of State for—
 - (a) the revocation of a non-derogating control order, or
 - (b) the modification of an obligation imposed by such an order,that person may appeal to the court against any decision by the Secretary of State on the application.
- (4) The function of the court on an appeal against the renewal of a non-derogating control order, or on an appeal against a decision not to revoke such an order, is to determine whether either or both of the following decisions of the Secretary of State was flawed—
 - (a) his decision that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for an order imposing obligations on the controlled person to continue in force;
 - (b) his decision that the obligations to be imposed by the renewed order, or (as the case may be) the obligations imposed by the order to which the application for revocation relates, are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity.
- (5) The function of the court on an appeal against a modification of an obligation imposed by a non-derogating control order (whether on a renewal or otherwise), or on an

appeal against a decision not to modify such an obligation, is to determine whether the following decision of the Secretary of State was flawed—

- (a) in the case of an appeal against a modification, his decision that the modification is necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity; and
 - (b) in the case of an appeal against a decision on an application for the modification of an obligation, his decision that the obligation continues to be necessary for that purpose.
- (6) In determining the matters mentioned in subsections (4) and (5) the court must apply the principles applicable on an application for judicial review.
- (7) If the court determines on an appeal under this section that a decision of the Secretary of State was flawed, its only powers are—
- (a) power to quash the renewal of the order;
 - (b) power to quash one or more obligations imposed by the order; and
 - (c) power to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes.
- (8) In every other case, the court must dismiss the appeal.

11 Jurisdiction and appeals in relation to control order decisions etc.

- (1) Control order decisions and derogation matters are not to be questioned in any legal proceedings other than—
- (a) proceedings in the court; or
 - (b) proceedings on appeal from such proceedings.
- (2) The court is the appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 (c. 42) in relation to proceedings all or any part of which call a control order decision or derogation matter into question.
- (3) No appeal shall lie from any determination of the court in control order proceedings, except on a question of law.
- (4) No appeal by any person other than the Secretary of State shall lie from any determination—
- (a) on an application for permission under section 3(1)(a); or
 - (b) on a reference under section 3(3)(a).
- (5) The Schedule to this Act (which makes provision relating to and for the purposes of control order proceedings and proceedings on appeal from such proceedings) has effect.
- (6) In this Act “control order proceedings” means—
- (a) proceedings on an application for permission under section 3(1)(a);
 - (b) proceedings on a reference under section 3(3)(a);
 - (c) proceedings on a hearing in pursuance of directions under section 3(2)(c) or (6)(b) or (c);
 - (d) proceedings on an application to the court by any person for the making, renewal, modification or revocation of a derogating control order;

- (e) proceedings on an application to extend the detention of a person under section 5;
 - (f) proceedings at or in connection with a hearing to determine whether to confirm a derogating control order (with or without modifications);
 - (g) proceedings on an appeal under section 10;
 - (h) proceedings in the court by virtue of subsection (2);
 - (i) any other proceedings in the court for questioning a control order decision, a derogation matter or the arrest or detention of a person under section 5;
 - (j) proceedings on an application made by virtue of rules of court under paragraph 5(1) of the Schedule to this Act (application for order requiring anonymity for the controlled person).
- (7) In this section “control order decision” means—
- (a) a decision made by the Secretary of State in exercise or performance of any power or duty of his under any of sections 1 to 8 or for the purposes of or in connection with the exercise or performance of any such power or duty;
 - (b) a decision by any other person to give a direction, consent or approval, or to issue a demand, for the purposes of any obligation imposed by a control order; or
 - (c) a decision by any person that is made for the purposes of or in connection with the exercise of his power to give such a direction, consent or approval or to issue such a demand.
- (8) In this section “derogation matter” means—
- (a) a derogation by the United Kingdom from the Human Rights Convention which relates to infringement of a person’s right to liberty under Article 5 in consequence of obligations imposed on him by a control order or of his arrest or detention under section 5; or
 - (b) the designation of such a derogation under section 14(1) of the Human Rights Act 1998 (c. 42).

12 Effect of court’s decisions on convictions

- (1) This section applies where—
- (a) a control order, a renewal of a control order or an obligation imposed by a control order is quashed by the court in control order proceedings, or on an appeal from a determination in such proceedings; and
 - (b) before it was quashed a person had been convicted by virtue of section 9(1) or (2) of an offence of which he could not have been convicted had the order, renewal or (as the case may be) obligation been quashed before the proceedings for the offence were brought.
- (2) The person convicted may appeal against the conviction—
- (a) in the case of a conviction on indictment in England and Wales or Northern Ireland, to the Court of Appeal;
 - (b) in the case of a conviction on indictment or summary conviction in Scotland, to the High Court of Justiciary;
 - (c) in the case of a summary conviction in England and Wales, to the Crown Court; and
 - (d) in the case of a summary conviction in Northern Ireland, to the county court.

- (3) On an appeal under this section to any court, that court must allow the appeal and quash the conviction.
- (4) An appeal under this section to the Court of Appeal against a conviction on indictment—
 - (a) may be brought irrespective of whether the appellant has previously appealed against his conviction;
 - (b) may not be brought more than 28 days after the date of the quashing of the order, renewal or obligation; and
 - (c) is to be treated as an appeal under section 1 of the Criminal Appeal Act 1968 (c. 19) or, in Northern Ireland, under section 1 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47), but does not require leave in either case.
- (5) An appeal under this section to the High Court of Justiciary against a conviction on indictment—
 - (a) may be brought irrespective of whether the appellant has previously appealed against his conviction;
 - (b) may not be brought more than two weeks after the date of the quashing of the order, renewal or obligation; and
 - (c) is to be treated as an appeal under section 106 of the Criminal Procedure (Scotland) Act 1995 (c. 46) for which leave has been granted.
- (6) An appeal under this section to the High Court of Justiciary against a summary conviction—
 - (a) may be brought irrespective of whether the appellant pleaded guilty;
 - (b) may be brought irrespective of whether the appellant has previously appealed against his conviction;
 - (c) may not be brought more than two weeks after the date of the quashing of the order, renewal or obligation;
 - (d) is to be by note of appeal, which shall state the ground of appeal;
 - (e) is to be treated as an appeal for which leave has been granted under Part 10 of the Criminal Procedure (Scotland) Act 1995; and
 - (f) must be in accordance with such procedure as the High Court of Justiciary may, by Act of Adjournal, determine.
- (7) An appeal under this section to the Crown Court or to the county court in Northern Ireland against a summary conviction—
 - (a) may be brought irrespective of whether the appellant pleaded guilty;
 - (b) may be brought irrespective of whether he has previously appealed against his conviction or made an application in respect of the conviction under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (case stated);
 - (c) may not be brought more than 21 days after the date of the quashing of the order, renewal or obligation; and
 - (d) is to be treated as an appeal under section 108(1)(b) of that Act or, in Northern Ireland, under Article 140(1)(b) of that Order.
- (8) In section 133(5) of the Criminal Justice Act 1988 (c. 33) (compensation for miscarriages of justice), at the end of paragraph (c) insert “or

- (d) on an appeal under section 12 of the Prevention of Terrorism Act 2005.”