

## SCHEDULE

Section 11

### CONTROL ORDER PROCEEDINGS ETC.

#### *Introductory*

- 1 (1) In this Schedule “the relevant powers” means the powers to make rules of court for regulating the practice and procedure to be followed in proceedings in the court, the Court of Appeal or the Inner House of the Court of Session, so far as those powers are exercisable in relation to—
  - (a) control order proceedings; or
  - (b) relevant appeal proceedings.
- (2) In this Schedule “relevant appeal proceedings” means proceedings in the Court of Appeal or Inner House of the Court of Session on an appeal relating to any control order proceedings.

#### *General duty applying to exercise of the relevant powers*

- 2 A person exercising the relevant powers must have regard, in particular, to—
  - (a) the need to secure that the making and renewal of control orders and the imposition and modification of the obligations contained in such orders are properly reviewed; and
  - (b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.

#### *Initial exercise of relevant powers*

- 3 (1) This paragraph applies—
  - (a) on the first occasion after the passing of this Act on which the relevant powers are exercised in relation to control order proceedings and relevant appeal proceedings in England and Wales; and
  - (b) on the first occasion after the passing of this Act on which they are so exercised in relation to control order proceedings and relevant appeal proceedings in Northern Ireland.
- (2) On each of those occasions—
  - (a) the relevant powers may be exercised by the Lord Chancellor, instead of by the person by whom they are otherwise exercisable; and
  - (b) the Lord Chancellor is not required, before exercising the powers, to undertake any consultation that would be required in the case of rules made by that person.
- (3) The Lord Chancellor must—
  - (a) consult the Lord Chief Justice of England and Wales before making any rules under this paragraph in relation to England and Wales; and
  - (b) consult the Lord Chief Justice of Northern Ireland before making any rules under this paragraph in relation to Northern Ireland.
- (4) The requirements of sub-paragraph (3) may be satisfied by consultation that took place wholly or partly before the passing of this Act.
- (5) Rules of court made by the Lord Chancellor by virtue of this paragraph—

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- (a) must be laid before Parliament; and
  - (b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which they were made, cease to have effect at the end of that period.
- (6) Where rules cease to have effect in accordance with sub-paragraph (5)—
- (a) that does not affect anything previously done in reliance on the rules;
  - (b) the Lord Chancellor is to have power again to exercise the relevant powers, in relation to the proceedings in question, instead of the person by whom they are otherwise exercisable;
  - (c) he may exercise them on that occasion without undertaking any consultation that would be required in the case of rules made by that person; and
  - (d) the rules made by the Lord Chancellor on that occasion may include rules to the same or similar effect.
- (7) The following provisions do not apply to rules made by the Lord Chancellor by virtue of this paragraph—
- (a) section 3(2) of the Civil Procedure Act 1997 (c. 12) (negative resolution procedure);
  - (b) section 56 of the Judicature (Northern Ireland) Act 1978 (c. 23) (statutory rules procedure).
- (8) In sub-paragraph (5) “40 days” means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946 (c. 36).

*Special powers to make rules of court*

- 4 (1) Rules of court made in exercise of the relevant powers may, in particular—
- (a) make provision about the mode of proof in control order proceedings and about evidence in such proceedings;
  - (b) enable or require such proceedings to be determined without a hearing; and
  - (c) make provision about legal representation in such proceedings.
- (2) Rules of court made in exercise of the relevant powers may also, in particular—
- (a) make provision enabling control order proceedings or relevant appeal proceedings to take place without full particulars of the reasons for decisions to which the proceedings relate being given to a relevant party to the proceedings or his legal representative (if he has one);
  - (b) make provision enabling the relevant court to conduct proceedings in the absence of any person, including a relevant party to the proceedings and his legal representative (if he has one);
  - (c) make provision about the functions in control order proceedings and relevant appeal proceedings of persons appointed under paragraph 7; and
  - (d) make provision enabling the relevant court to give a relevant party to control order proceedings or relevant appeal proceedings a summary of evidence taken in his absence.
- (3) Rules of court made in exercise of the relevant powers must secure—
- (a) that in control order proceedings and relevant appeal proceedings the Secretary of State is required (subject to rules made under the following paragraphs) to disclose all relevant material;

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- (b) that the Secretary of State has the opportunity to make an application to the relevant court for permission not to disclose relevant material otherwise than to that court and persons appointed under paragraph 7;
  - (c) that such an application is always considered in the absence of every relevant party to the proceedings and of his legal representative (if he has one);
  - (d) that the relevant court is required to give permission for material not to be disclosed where it considers that the disclosure of the material would be contrary to the public interest;
  - (e) that, where permission is given by the relevant court not to disclose material, it must consider requiring the Secretary of State to provide the relevant party and his legal representative (if he has one) with a summary of the material;
  - (f) that the relevant court is required to ensure that such a summary does not contain information or other material the disclosure of which would be contrary to the public interest;
  - (g) that provision satisfying the requirements of sub-paragraph (4) applies where the Secretary of State does not have the relevant court's permission to withhold relevant material from a relevant party to the proceedings or his legal representative (if he has one), or is required to provide a summary of such material to that party or his legal representative.
- (4) The provision that satisfies the requirements of this sub-paragraph is provision which, in a case where the Secretary of State elects not to disclose the relevant material or (as the case may be) not to provide the summary, authorises the relevant court—
- (a) if it considers that the relevant material or anything that is required to be summarised might be of assistance to a relevant party in relation to a matter under consideration by that court, to give directions for securing that the matter is withdrawn from the consideration of that court; and
  - (b) in any other case, to ensure that the Secretary of State does not rely in the proceeding on the material or (as the case may be) on what is required to be summarised.
- (5) In this paragraph “relevant material”, in relation to any proceedings, means—
- (a) any information or other material that is available to the Secretary of State and relevant to the matters under consideration in those proceedings; or
  - (b) the reasons for decisions to which the proceedings relate.

#### *Application for anonymity for controlled person*

- 5 (1) Rules of court made in exercise of the relevant powers may provide for—
- (a) the making by the Secretary of State or the controlled person, at any time after a control order has been made, of an application to the court for an order requiring anonymity for that person; and
  - (b) the making by the court, on such an application, of an order requiring such anonymity;
- and the provision made by the rules may allow the application and the order to be made irrespective of whether any other control order proceedings have been begun in the court.
- (2) Rules of court may provide for the Court of Appeal or the Inner House of the Court of Session to make an order in connection with any relevant appeal proceedings requiring anonymity for the controlled person.

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- (3) In sub-paragraphs (1) and (2) the references, in relation to a court, to an order requiring anonymity for the controlled person are references to an order by that court which imposes such prohibition or restriction as it thinks fit on the disclosure—
- (a) by such persons as the court specifies or describes, or
  - (b) by persons generally,
- of the identity of the controlled person or of any information that would tend to identify him.

#### *Use of advisers*

- 6 (1) In any control order proceedings the court may, if it thinks fit—
- (a) call in aid one or more advisers appointed for the purpose by the Lord Chancellor; and
  - (b) hear and dispose of the proceedings with the assistance of the adviser or advisers.
- (2) Rules of court may regulate the use of advisers in accordance with the power conferred by this paragraph.
- (3) The Lord Chancellor may, out of money provided by Parliament, pay such remuneration, expenses and allowances to advisers appointed for the purposes of this paragraph as he may determine.

#### *Special representation in control order proceedings*

- 7 (1) The relevant law officer may appoint a person to represent the interests of a relevant party to relevant proceedings in any of those proceedings from which that party and his legal representative (if he has one) are excluded.
- (2) In sub-paragraph (1) “relevant proceedings” means—
- (a) control order proceedings; or
  - (b) proceedings on an appeal or further appeal relating to control order proceedings.
- (3) A person may be appointed under this paragraph—
- (a) in the case of an appointment by the Attorney General, only if he has a general legal qualification for the purposes of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (b) in the case of an appointment by the Advocate General for Scotland, only if he is a person with appropriate rights of audience in Scotland; and
  - (c) in the case of an appointment by the Advocate General for Northern Ireland, only if he is a member of the Bar of Northern Ireland.
- (4) In sub-paragraph (3) “person with appropriate rights of audience in Scotland” means—
- (a) an advocate; or
  - (b) a solicitor with rights of audience by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46) in the Court of Session or the High Court of Justiciary.
- (5) A person appointed under this paragraph is not to be responsible to the person whose interests he is appointed to represent.

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- (6) In this paragraph “the relevant law officer” means—
- (a) in relation to control order proceedings in England and Wales or proceedings on an appeal or further appeal relating to such proceedings, the Attorney General;
  - (b) in relation to proceedings in Scotland or proceedings on an appeal or further appeal relating to such proceedings, the Advocate General for Scotland;
  - (c) in relation to proceedings in Northern Ireland or proceedings on an appeal or further appeal relating to such proceedings, the Advocate General for Northern Ireland.
- (7) In relation to any time before the coming into force of section 27 of the Justice (Northern Ireland) Act 2002 (c. 26), references in this paragraph to the Advocate General for Northern Ireland are to have effect as references to the Attorney General for Northern Ireland.

#### *Effect of court orders*

- 8 (1) Where—
- (a) a control order,
  - (b) the renewal of such an order, or
  - (c) an obligation imposed by such an order,
- is quashed, the order, renewal or (as the case may be) obligation shall be treated for the purposes of section 9(1) and (2) as never having been made or imposed.
- (2) A decision by the court or on appeal from the court—
- (a) to quash a control order, the renewal of a control order or an obligation imposed by such an order, or
  - (b) to give directions to the Secretary of State in relation to such an order,
- does not prevent the Secretary of State from exercising any power of his to make a new control order to the same or similar effect or from relying, in whole or in part, on the same matters for the purpose of making that new order.

#### *Interception evidence*

- 9 (1) Section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of interception matters from legal proceedings) is amended as follows.
- (2) In subsection (1), after paragraph (d) insert—
- “(da) any control order proceedings (within the meaning of the Prevention of Terrorism Act 2005) or any proceedings arising out of such proceedings;”.
- (3) In subsection (2) (persons disclosures to whom continue to be prohibited despite section 18), for “paragraph (e) or (f)” substitute “paragraphs (da) to (f)”.
- (4) In that subsection, before paragraph (a) insert—
- “(za) in the case of any proceedings falling within paragraph (da) to—
- (i) a person who, within the meaning of the Schedule to the Prevention of Terrorism Act 2005, is or was a relevant party to the control order proceedings; or

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- (ii) any person who for the purposes of any proceedings so falling (but otherwise than by virtue of an appointment under paragraph 7 of that Schedule) represents a person falling within sub-paragraph (i);”.

#### *Allocation to Queen’s Bench Division*

- 10 In paragraph 2 of Schedule 1 to the Supreme Court Act 1981 (c. 54) (business allocated to Queen’s Bench Division), after sub-paragraph (b) insert—  
“(ba) all control order proceedings (within the meaning of the Prevention of Terrorism Act 2005);”.

#### *Interpretation of Schedule*

- 11 In this Schedule—  
“legal representative”, in relation to a relevant party to proceedings, does not include a person appointed under paragraph 7 to represent that party’s interests;  
“relevant appeal proceedings” has the meaning given by paragraph 1(2);  
“relevant court”—  
(a) in relation to control order proceedings, means the court; and  
(b) in relation to relevant appeal proceedings, means the Court of Appeal or the Inner House of the Court of Session;  
“relevant party”, in relation to control order proceedings or relevant appeal proceedings, means any party to the proceedings other than the Secretary of State;  
“relevant powers” has the meaning given by paragraph 1(1).