



# Counter-Terrorism Act 2008

## 2008 CHAPTER 28

### PART 6

#### FINANCIAL RESTRICTIONS PROCEEDINGS

### CHAPTER 2

#### FINANCIAL RESTRICTIONS PROCEEDINGS

#### *Introductory*

#### **65 Financial restrictions proceedings**

In this Chapter “financial restrictions proceedings” means proceedings in the High Court or the Court of Session on an application under section 63 or on a claim arising from any matter to which such an application relates.

#### *Rules of court, disclosure and related matters*

#### **66 General provisions about rules of court**

- (1) The following provisions apply to rules of court relating to—
  - (a) financial restrictions proceedings, or
  - (b) proceedings on an appeal relating to financial restrictions proceedings.
- (2) A person making rules of court must have regard to—
  - (a) the need to secure that the decisions that are the subject of the proceedings 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.
- (3) Rules of court may make provision—

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- (a) about the mode of proof and about evidence in the proceedings;
  - (b) enabling or requiring the proceedings to be determined without a hearing; and
  - (c) about legal representation in the proceedings.
- (4) Rules of court may make provision—
- (a) enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party to the proceedings (or to any legal representative of that party);
  - (b) enabling the court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of that party);
  - (c) about the functions of a person appointed as a special advocate;
  - (d) enabling the court to give a party to the proceedings a summary of evidence taken in the party's absence.
- (5) In this section—
- (a) references to a party to the proceedings do not include the Treasury;
  - (b) references to a party's legal representative do not include a person appointed as a special advocate.
- (6) Nothing in this section shall be read as restricting the power to make rules of court or the matters to be taken into account when doing so.

## **67 Rules of court about disclosure**

- (1) The following provisions apply to rules of court relating to—
- (a) financial restrictions proceedings, or
  - (b) proceedings on an appeal relating to financial restrictions proceedings.
- (2) Rules of court must secure that the Treasury are required to disclose—
- (a) material on which they rely,
  - (b) material which adversely affects their case, and
  - (c) material which supports the case of a party to the proceedings.

This is subject to the following provisions of this section.

- (3) Rules of court must secure—
- (a) that the Treasury have the opportunity to make an application to the court for permission not to disclose material otherwise than to—
    - (i) the court, and
    - (ii) any person appointed as a special advocate;
  - (b) that such an application is always considered in the absence of every party to the proceedings (and every party's legal representative);
  - (c) that the court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be contrary to the public interest;
  - (d) that, if permission is given by the court not to disclose material, it must consider requiring the Treasury to provide a summary of the material to every party to the proceedings (and every party's legal representative);
  - (e) that the court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest.

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- (4) Rules of court must secure that in cases where the Treasury—
  - (a) do not receive the court’s permission to withhold material, but elect not to disclose it, or
  - (b) are required to provide a party to the proceedings with a summary of material that is withheld, but elect not to provide the summary,provision to the following effect applies.
- (5) The court must be authorised—
  - (a) if it considers that the material or anything that is required to be summarised might adversely affect the Treasury’s case or support the case of a party to the proceedings, to direct that the Treasury shall not rely on such points in their case, or shall make such concessions or take such other steps, as the court may specify, or
  - (b) in any other case, to ensure that the Treasury do not rely on the material or (as the case may be) on that which is required to be summarised.
- (6) Nothing in this section, or in rules of court made under it, is to be read as requiring the court to act in a manner inconsistent with Article 6 of the Human Rights Convention.
- (7) In this section—
  - (a) references to a party to the proceedings do not include the Treasury;
  - (b) references to a party’s legal representative do not include a person appointed as a special advocate; and
  - (c) “the Human Rights Convention” means the Convention within the meaning of the Human Rights Act 1998 (c. 42) (see section 21(1) of that Act).

## **68 Appointment of special advocate**

- (1) The relevant law officer may appoint a person to represent the interests of a party to—
  - (a) financial restrictions proceedings, or
  - (b) proceedings on an appeal, or further appeal, relating to financial restrictions proceedings,in any of those proceedings from which the party (and any legal representative of the party) is excluded.

This is referred to in this Chapter as appointment as “a special advocate”.
- (2) A person appointed as a special advocate is not responsible to the party to the proceedings whose interests the person is appointed to represent.
- (3) The relevant law officer is—
  - (a) in relation to financial restrictions proceedings in England and Wales, or on an appeal or further appeal relating to such proceedings, the Attorney General;
  - (b) in relation to financial restrictions proceedings in Scotland, or on an appeal or further appeal relating to such proceedings, the Advocate General for Scotland;
  - (c) in relation to financial restrictions proceedings in Northern Ireland, or on an appeal or further appeal relating to such proceedings, the Advocate General for Northern Ireland.
- (4) A person may be appointed as a special advocate only if—

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- (a) in the case of an appointment by the Attorney General, the person 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, the person is an advocate or a solicitor who has rights of audience in the Court of Session or the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46);
  - (c) in the case of an appointment by the Advocate General for Northern Ireland, the person is a member of the Bar of Northern Ireland.
- (5) Until the coming into force of section 27 of the Justice (Northern Ireland) Act 2002 (c. 26), references in this section to the Advocate General for Northern Ireland are to be read as references to the Attorney General for Northern Ireland.

The coming into force of that section does not affect any appointment of a person as a special advocate made by the Attorney General for Northern Ireland before that time.

## 69 Intercept evidence

- (1) Section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of intercepted communications etc from legal proceedings) is amended as follows.
- (2) In subsection (1) (excepted proceedings), after paragraph (da) insert—
  - “(db) any financial restrictions proceedings as defined in section 65 of the Counter-Terrorism Act 2008, or any proceedings arising out of such proceedings;”.
- (3) In subsection (2) (persons to whom disclosure not to be made), after paragraph (za) insert—
  - “(zb) in the case of proceedings falling within paragraph (db), to—
    - (i) a person, other than the Treasury, who is or was a party to the proceedings, or
    - (ii) any person who for the purposes of the proceedings (but otherwise than by virtue of appointment as a special advocate) represents a person falling within sub-paragraph (i);”.

## 70 Qualification of duty to give reasons

In paragraph 11 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (Treasury’s duty to give reason why person is specified in freezing order), make the existing provision sub-paragraph (1) and after it insert—

“(2) Sub-paragraph (1) does not apply if, or to the extent that, particulars of the reason would not be required to be disclosed to the applicant in proceedings to set aside the freezing order.”.

### *Supplementary provisions*

#### **71 Allocation of proceedings to Queen’s Bench Division**

In paragraph 2 of Schedule 1 to the Supreme Court Act 1981 (c. 54) (business allocated to the Queen’s Bench Division), after sub-paragraph (ba) insert—

“(bb) all financial restrictions proceedings within the meaning of Chapter 2 of Part 6 of the Counter-Terrorism Act 2008 (see section 65 of that Act);”.

#### **72 Initial exercise of powers by Lord Chancellor**

(1) The first time after the passing of this Act that rules of court are made in exercise of the powers conferred by this Chapter—

- (a) in relation to proceedings in England and Wales, or
- (b) in relation to proceedings in Northern Ireland,

they may be made by the Lord Chancellor instead of by the person who would otherwise make them.

(2) Before making rules of court under this section, the Lord Chancellor must consult—

- (a) in relation to rules applicable to proceedings in England and Wales, the Lord Chief Justice of England and Wales;
- (b) in relation to rules applicable to proceedings in Northern Ireland, the Lord Chief Justice of Northern Ireland.

The Lord Chancellor is not required to undertake any other consultation before making the rules.

(3) The requirements of subsection (2)(a) and (b) may be satisfied by consultation that took place wholly or partly before the passing of this Act.

(4) Rules of court made by the Lord Chancellor under this section—

- (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.

In reckoning the period of 40 days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(5) If rules cease to have effect in accordance with subsection (4)—

- (a) that does not affect anything previously done in reliance on the rules; and
- (b) subsection (1) applies as if the rules had not been made.

(6) The following provisions do not apply to rules of court made by the Lord Chancellor under this section—

- (a) section 3(6) of the Civil Procedure Act 1997 (c. 12) (Parliamentary procedure for civil procedure rules);
- (b) section 56 of the Judicature (Northern Ireland) Act 1978 (c. 23) (statutory rules procedure).

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Until section 85 of the Courts Act 2003 (c. 39) (process for making civil procedure rules) comes into force, in paragraph (a) above for “section 3(6)” substitute “section 3(2)”.

### **73 Interpretation**

In this Chapter—

“financial restrictions proceedings” has the meaning given by section 65;

“rules of court” means rules for regulating the practice and procedure to be followed in the High Court or the Court of Appeal or in the Court of Session;

“special advocate” means a person appointed under section 68.