

# **PREVENTION OF TERRORISM ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### *Schedule*

92. The Schedule makes provision relating to and for the purposes of control order proceedings in the High Court and Court of Session and proceedings on appeal from such proceedings.

#### *Paragraph 1*

93. This paragraph provides a definition of ‘relevant powers’ and ‘relevant appeal proceedings’.
94. The relevant powers are the existing powers to make rules of court for the High Court, the Court of Appeal and the Court of Session, so far as those powers are exercisable in relation to control order proceedings and relevant appeal proceedings.

#### *Paragraph 2*

95. This paragraph imposes a general duty on persons exercising the relevant powers to have regard to (a) the need to secure that control 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.

#### *Paragraph 3*

96. This paragraph makes special provision for the initial exercise of the relevant powers in relation to England and Wales and Northern Ireland. The Lord Chancellor may exercise those relevant powers to make rules for control order proceedings and relevant appeal proceedings on the first occasion that those powers are exercised after the passing of the Act (instead of the Civil Procedure Rule Committee and the Northern Ireland Supreme Court Rules Committee).
97. Sub-paragraph (3) provides that the Lord Chancellor must consult the Lord Chief Justice of England and Wales and the Lord Chief Justice of Northern Ireland, before making any rules in relation to those jurisdictions.
98. Sub-paragraph (5) provides that the rules of court made by the Lord Chancellor must be laid before Parliament and if not approved by a resolution of each House within 40 days of their making, they cease to have effect.
99. Sub-paragraph (6) provides that if the rules cease to have effect in accordance with sub-paragraph (5), (a) that does not affect anything previously done in reliance on those rules; (b) the Lord Chancellor has the power to make new rules; and (c) the new rules may include rules to the same or similar effect as the rules that have ceased to have effect.

#### **Paragraph 4**

100. This paragraph makes further provision for rules of court made in exercise of the relevant powers.
101. Sub-paragraphs (1) and (2) set out the matters for which such rules may make provision. Rules may provide, for example, that proceedings are to be conducted in the absence of the controlled person, and his legal representative, when the court hears sensitive evidence in closed session. Rules may also allow the court to give the controlled person a summary of the evidence taken in his absence.
102. Sub-paragraph (3) sets out the procedures that must be secured by such rules. Rules must make provision:
  - To require the Secretary of State (subject to rules made under sub-paragraph (3) (b) to (g)) to disclose all ‘relevant material’, which is defined in sub-paragraph (5) as any information or other material that is available to the Secretary of State and relevant to the matters in the proceedings and the reasons for decisions to which the proceedings relate.
  - To allow the Secretary of State an opportunity to apply to the court for permission not to disclose relevant material to anyone other than the court or persons appointed under paragraph 7 of the Schedule (the special advocates).
  - To ensure that the court always considers such an application in the absence of the controlled person (or any other relevant party) and his legal representative.
  - To ensure that the court must give permission for material to be withheld where the court considers that disclosure of that material would be contrary to the public interest.
  - To ensure that where the court grants permission for material not to be disclosed the court considers requiring the Secretary of State to provide the relevant party and his legal representative with a summary of the material.
  - To ensure that, where the Secretary of State elects not to disclose relevant material, or provide a summary, the court may prevent the Secretary of State from relying on that material, or matters required to be summarised. The court may also require the Secretary of State to withdraw any allegation or argument to which that material (or matters required to be summarised) relates.

#### **Paragraph 5**

103. This paragraph provides that the rules may also allow the controlled person, or the Secretary of State, to apply for an order requiring the anonymity of the controlled person, even before court proceedings have begun.

#### **Paragraph 6**

104. This paragraph provides for the court to call on advisers, appointed for the purpose by the Lord Chancellor, and to hear and dispose of proceedings with the assistance of those advisers.

#### **Paragraph 7**

105. This paragraph makes provision for the appointment of qualified lawyers (to be known as “special advocates”) to represent the interests of a relevant party to control order proceedings and relevant appeal proceedings where that party and his legal representative are excluded from the proceedings. The special advocate is not responsible to the party whom he represents.

***Paragraph 8***

106. This paragraph provides that, for the purposes of section 9(1) and 9(2), where a court quashes a control order or an obligation imposed by it (or where it revokes a control order or obligation and directs that the Act shall have effect as if the order or obligation had been quashed), that order or obligation shall be treated as though it had never been made or imposed. But the quashing of a control order or obligation does not prevent the Secretary of State from exercising his power to make a new order to the same or similar effect or from relying on the same matters in doing so.

***Paragraph 9***

107. This paragraph amends section 18 of the [Regulation of Investigatory Powers Act 2000 \(c. 23\)](#) to allow for the admission of interception evidence in control order proceedings or any proceedings arising from such proceedings.

***Paragraph 10***

108. This paragraph amends paragraph 2 of Schedule 1 to the [Supreme Court Act 1981 \(c. 54\)](#) to allocate control order proceedings to the Queen's Bench Division of the High Court.