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STATUTORY INSTRUMENTS

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**1998 No. 3132**

**The Civil Procedure Rules 1998**

**[<sup>F1</sup>PART 76**

**PROCEEDINGS UNDER THE PREVENTION OF TERRORISM ACT 2005**

**[<sup>F1</sup>SECTION 5**

*General provisions*

**Textual Amendments**

- F1** Pt. 76 inserted (14.3.2005) by [The Civil Procedure \(Amendment No. 2\) Rules 2005 \(S.I. 2005/656\)](#), rule 1, [Sch.](#)

**Scope of this section**

**76.17.** This section of this Part applies to—

- (a) control order proceedings in the High Court; and
- (b) appeals to the Court of Appeal against an order of the High Court in such proceedings.

**Address for issuing proceedings in the High Court**

**76.18.** Any control order proceedings must be issued at the Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

**Applications for anonymity**

**76.19.—**(1) The controlled person or the Secretary of State may apply for an order requiring the anonymity of the controlled person.

(2) An application under paragraph (1) may be made at any time, irrespective of whether any control order proceedings have been commenced.

(3) An application may be made without notice to the other party.

[<sup>F2</sup>(4) References in this rule—

- (a) to an order requiring anonymity for the controlled person are to be construed in accordance with paragraph 5(3) of the Schedule to the Act; and
- (b) to the controlled person, in relation to a time before the control order has been made, are to be construed in accordance with paragraph 5(4) of the Schedule to the Act.]

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### Textual Amendments

- F2** Rule 76.19(4) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **16(b)**

### Notification of hearing

**76.20.** Unless the court orders otherwise, it must serve notice of the date, time and place fixed for any hearing on—

- (a) every party, whether or not entitled to attend that hearing; and
- (b) if one has been appointed for the purposes of the hearing, the special advocate or those instructing him.

### Hearings

**76.21.**—(1) The following proceedings must be determined at a hearing—

- (a) a hearing pursuant to directions given under section 4(1)(b) of the Act (derogating control orders);
- (b) a hearing pursuant to directions given under sections 3(2)(c) or (6)(b) or (c) of the Act (non-derogating control orders);
- (c) an appeal under section 10 of the Act (appeal relating to a non-derogating control order);
- (d) an appeal to the Court of Appeal from an order of the High Court made in any of the above proceedings; and
- (e) a hearing under rule 76.29(2) (consideration of Secretary of State’s objection).

(2) Paragraph (1)(c) and (d) do not apply where—

- (a) the appeal is withdrawn by the controlled person;
- (b) the Secretary of State consents to the appeal being allowed; or
- (c) the controlled person is outside the United Kingdom or it is impracticable to give him notice of a hearing and, in either case, he is unrepresented.

### Hearings in private

**76.22.**—(1) If the court considers it necessary for any relevant party and his legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, it must—

- (a) direct accordingly; and
- (b) conduct the hearing, or that part of it from which the relevant party and his legal representative are excluded, in private.

(2) The court may conduct a hearing or part of a hearing in private for any other good reason.

### Appointment of a special advocate

**76.23.**—(1) Subject to paragraph (2), the Secretary of State must immediately give notice of the proceedings to the [<sup>F3</sup>Attorney General] upon—

- (a) making an application under section 4(1) of the Act (relating to a derogating control order);
- (b) making an application under section 3(1)(a) of the Act (application for permission to make a non-derogating control order);

- (c) making a reference under section 3(3) of the Act (reference of a non-derogating control order made without permission); or
  - (d) being served with a copy of any application, claim, or notice of appeal in proceedings to which this Part applies.
- (2) Paragraph (1) applies unless—
- (a) the Secretary of State does not intend to—
    - (i) oppose the appeal or application; or
    - (ii) withhold closed material from a relevant party; or
  - (b) a special advocate has already been appointed to represent the interests of the relevant party in the proceedings and that special advocate is not prevented from communicating with that party by virtue of rule 76.25.
- (3) Where notice is given to the [F<sup>4</sup>Attorney General] under paragraph (1), the [F<sup>4</sup>Attorney General] may appoint a special advocate to represent the interests of the relevant party in the proceedings.
- (4) Where any proceedings to which this Part apply are pending but no special advocate has been appointed, a relevant party or the Secretary of State may request the [F<sup>5</sup>Attorney General] to appoint a special advocate.

#### Textual Amendments

- F3** Words in rule 76.23(1) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(c)(i)**
- F4** Words in rule 76.23(3) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(c)(ii)**
- F5** Words in rule 76.23(4) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(c)(iii)**

#### Functions of special advocate

- 76.24.** The functions of a special advocate are to represent the interests of a relevant party by—
- (a) making submissions to the court at any hearings from which the relevant party and his legal representatives are excluded;
  - (b) [F<sup>6</sup>adducing evidence and] cross-examining witnesses at any such hearings; and
  - (c) making written submissions to the court.

#### Textual Amendments

- F6** Words in rule 76.24(b) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **16(c)**

#### Special advocate: communicating about proceedings

**76.25.—**(1) The special advocate may communicate with the relevant party or his legal representative at any time before the Secretary of State serves closed material on him.

(2) After the Secretary of State serves closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings,

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except in accordance with paragraph (3) or a direction of the court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the court, communicate about the proceedings with—

- (a) the court;
- (b) the Secretary of State, or any person acting for him;
- (c) the [<sup>F7</sup>Attorney General], or any person acting for him; or
- (d) any other person, except for the relevant party or his legal representative, with whom it is necessary for administrative purposes for him to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the court authorising him to communicate with the relevant party or his legal representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)—

- (a) the court must notify the Secretary of State of the request; and
- (b) the Secretary of State must, within a period specified by the court, file with the court and serve on the special advocate notice of any objection which he has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the relevant party from communicating with the special advocate after the Secretary of State has served material on him as mentioned in paragraph (1), but—

- (a) the relevant party may only communicate with the special advocate through a legal representative in writing; and
- (b) the special advocate must not reply to the communication other than in accordance with directions of the court, except that he may without such directions send a written acknowledgment of receipt to the legal representative of the relevant party.

#### Textual Amendments

**F7** Words in [rule 76.25\(3\)\(c\)](#) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), [rules 1\(b\)](#), [10\(d\)](#)

#### Modification of the general rules of evidence and disclosure

**76.26.**—(1) Part 31 (disclosure and inspection of documents), Part 32 (evidence) and Part 33 (miscellaneous rules about evidence) do not apply to any proceedings to which this Part applies.

(2) Subject to the other rules in this Part, the evidence of a witness may be given either—

- (a) orally, before the court; or
- (b) in writing, in which case it shall be given in such manner and at such time as the court directs.

(3) The court may also receive evidence in documentary or any other form.

(4) The court may receive evidence that would not, but for this rule, be admissible in a court of law.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which he and his legal representative are not excluded.

[  
<sup>F8</sup>(5A) A special advocate shall be entitled to adduce evidence and to cross-examine witnesses.]

- (6) The court may require a witness to give evidence on oath.

#### **Textual Amendments**

- F8** Rule 76.26(5A) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **16(d)**

#### **Filing and service of relevant material**

**76.27.** The Secretary of State is required to make a reasonable search for relevant material and to file and serve that material in accordance with the rules in this Part.

#### **Closed material**

**76.28.—**(1) The Secretary of State—

- (a) must apply to the court for permission to withhold closed material from a relevant party or his legal representative in accordance with this rule; and
- (b) may not rely on closed material at a hearing on notice unless a special advocate has been appointed to represent the interests of the relevant party.

(2) The Secretary of State must file with the court and serve, at such time as the court directs, on the special advocate—

- (a) the closed material;
- (b) a statement of his reasons for withholding that material from the relevant party; and
- (c) if he considers it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the relevant party.

(3) The Secretary of State may at any time amend or supplement material filed under this rule, but only with—

- (a) the agreement of the special advocate; or
- (b) the permission of the court.

#### **Consideration of Secretary of State's objection**

**76.29.—**(1) This rule applies where the Secretary of State has—

- (a) objected under rule 76.25(5)(b) to a proposed communication by the special advocate; or
- (b) applied under rule 76.28 for permission to withhold closed material.

(2) The court must fix a hearing for the Secretary of State and the special advocate to make oral representations, unless—

- (a) the special advocate gives notice to the court that he does not challenge the objection or application;
- (b) the court has previously considered—
  - (i) an objection under rule 76.25(5)(b) [<sup>F9</sup>to the same or substantially the same communication], or
  - (ii) an application under rule 76.28(1) for permission to withhold the same or substantially the same material, and

is satisfied that it would be just to uphold that objection or to give permission without a hearing; or

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- (c) the Secretary of State and the special advocate consent to the court deciding the issue without a hearing.
- (3) If the special advocate does not challenge the objection or the application, he must give notice of that fact to the court and the Secretary of State within 14 days, or such other period as the court may direct, after the Secretary of State serves on him a notice under rule 76.25(5)(b) or material under rule 76.28(2).
- (4) Where the court fixes a hearing under this rule, the Secretary of State and the special advocate must before the hearing file with the court a schedule identifying the issues which cannot be agreed between them, which must—
- (a) list the items or issues in dispute;
  - (b) give brief reasons for their contentions on each; and
  - (c) set out any proposals for the court to resolve the issues in contention.
- (5) A hearing under this rule shall take place in the absence of the relevant party and his legal representative.
- (6) Where the court gives permission to the Secretary of State to withhold closed material, the court must—
- (a) consider whether to direct the Secretary of State to serve a summary of that material on the relevant party or his legal representative; but
  - (b) ensure that no such summary contains information or other material the disclosure of which would be contrary to the public interest.
- (7) Where the court has not given permission to the Secretary of State to withhold closed material from, or has directed the Secretary of State to serve a summary of that material on, a relevant party or his legal representative—
- (a) the Secretary of State shall not be required to serve that material or summary; but
  - (b) if he does not do so, at a hearing on notice the court may—
    - (i) if it considers that the material or anything that is required to be summarised might be of assistance to the relevant party in relation to a matter under consideration by the court, direct that the matter be withdrawn from its consideration, and
    - (ii) in any other case, direct that the Secretary of State shall not rely in the proceedings on that material or (as the case may be) on what is required to be summarised.
- (8) The court must give permission to the Secretary of State to withhold closed material where it considers that the disclosure of that material would be contrary to the public interest.

#### **Textual Amendments**

**F9** Words in [rule 76.29\(2\)\(b\)\(i\)](#) inserted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), [rules 1\(b\)](#), [10\(e\)](#)

#### **Order of filing and serving material and written submissions**

**76.30.** Subject to any directions given by the court, the parties must file and serve any material and written submissions, and the special advocate must file and serve any written submissions, in the following order—

- (a) the Secretary of State must file with the court all relevant material;
- (b) the Secretary of State must serve on—
  - (i) the relevant party or his legal representative; and

- (ii) the special advocate (as soon as one is appointed) or those instructing him, any open material;
- (c) the relevant party must file with the court and serve on the Secretary of State and special advocate (if one is appointed) or those instructing him any written evidence which he wishes the court to take into account at the hearing;
- (d) the Secretary of State must file with the court any further relevant material;
- (e) the Secretary of State must serve on—
  - (i) the relevant party or his legal representative, and
  - (ii) the special advocate (as soon as one is appointed) or those instructing him, any open material filed with the court under paragraph (d);
- (f) the Secretary of State must serve on the special advocate (if one has been appointed) any closed material;
- (g) the parties and the special advocate (if one has been appointed) must file and serve any written submissions as directed by the court.

(Rules 76.28 and 76.29 will apply where any closed material is filed by the Secretary of State).

#### **Failure to comply with directions**

**76.31.**—(1) Where a party or the special advocate fails to comply with a direction of the court, the court may serve on him a notice which states—

- (a) the respect in which he has failed to comply with the direction;
- (b) a time limit for complying with the direction; and
- (c) that the court may proceed to determine the proceedings before it, on the material available to it, if the party or the special advocate fails to comply with the relevant direction within the time specified.

(2) Where a party or special advocate fails to comply with such a notice, the court may proceed in accordance with paragraph (1)(c).

#### **Judgments**

**76.32.**—(1) When the court gives judgment in any proceedings to which this Part applies, it may withhold any or part of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.

(2) Where the judgment of the court does not include the full reasons for its decision, the court must serve on the Secretary of State and the special advocate a separate written judgment including those reasons.

#### **Application by Secretary of State for reconsideration of decision**

**76.33.**—(1) This rule applies where the court proposes, in any proceedings to which this Part applies, to serve notice on a relevant party of any—

- (a) order or direction made or given in the absence of the Secretary of State; or
- (b) any judgment.

(2) Before the court serves any such notice on the relevant party, it must first serve notice on the Secretary of State of its intention to do so.

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(3) The Secretary of State may, within 5 days of being served with notice under paragraph (2), apply to the court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if he considers that—

- (a) his compliance with the order or direction; or
- (b) the notification to the relevant party of any matter contained in the judgment, order or direction;

would cause information to be disclosed contrary to the public interest.

[<sup>F10</sup>(4) Where the Secretary of State makes an application under paragraph (3), he must at the same time serve on the special advocate, if one has been appointed—

- (a) a copy of the application; and
- (b) a copy of the notice served on the Secretary of State pursuant to paragraph (2).]

(5) Rule 76.29 (except for paragraphs (6) and (7)) shall, if a special advocate has been appointed, apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.

(6) The court must not serve notice on the relevant party as mentioned in paragraph (1) before the time for the Secretary of State to make an application under paragraph (3) has expired.

#### Textual Amendments

**F10** Rule 76.33(4) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(f)**

#### Supply of court documents

**76.34.** Unless the court otherwise directs, [<sup>F11</sup>rule 5.4 (Register of Claims), rule 5.4B (Supply of documents from court records – a party) and rule 5.4C (Supply of documents from court records – a non-party) do] not apply to any proceedings to which this Part applies.]

#### Textual Amendments

**F11** Words in [rule 76.34](#) substituted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **11**



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