

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2015

2015 No. 406 (L. 3)

1. This explanatory memorandum has been prepared by the Home Office in consultation with the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Civil Procedure Rules (“CPR”) by—

(a) inserting a new Part 88 containing rules about—

(i) temporary exclusion orders (TEO) proceedings in the High Court, and

(ii) appeals to the Court of Appeal against orders in such proceedings brought under the Counter-Terrorism and Security Act 2015 (‘the Act’).

(b) making consequential amendments and modifications to the CPR for the purpose of those proceedings.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Act received Royal Assent on 12th February 2015 and the power to make temporary exclusion orders (“TEOs”) came into force the following day. This instrument was made on 26th February and came into force on 27th February. The urgency of the passage of the Act and the making of this instrument is due to the immediate requirement for the police and security services to have access to the power to make TEOs. It would not be possible to use the power without the Rules having been made. The requirement for early commencement was anticipated in the Act, which, for that reason, confers the initial exercise of the rule-making power on the Lord Chancellor rather than the Civil Procedure Rule Committee.

3.2 If there were to be a longer period between the laying and the commencement of the Rules, it would not be possible for the Secretary of State to seek permission to impose a TEO during that period and this would prejudice the protection of the public from a risk of terrorism.

4. Legislative Context

4.1 The Act provides for the imposition of a TEO if the following conditions are met:

- Condition A is that the Secretary of State reasonably suspects that the individual is, or has been, involved in terrorism-related activity outside the United Kingdom.
- Condition B is that the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public in the United Kingdom from a risk of terrorism, for a temporary exclusion order to be imposed on the individual.
- Condition C is that the Secretary of State reasonably considers that the individual is outside the United Kingdom.
- Condition D is that the individual has the right of abode in the United Kingdom.
- Condition E is that—
 - (a) the court gives the Secretary of State permission under section 3, or
 - (b) the Secretary of State reasonably considers that the urgency of the case requires a temporary exclusion order to be imposed without obtaining such permission.

During the period that a temporary exclusion order is in force, the Secretary of State must keep under review whether condition B is met.

4.2 A TEO requires an individual not to return to the United Kingdom unless—

- (a) the return is in accordance with a permit to return issued by the Secretary of State before the individual began the return, or
- (b) the return is the result of the individual's deportation to the United Kingdom.

The Secretary of State may also impose certain conditions on an individual who is subject to a TEO, on their return to the United Kingdom.

4.3 The individual may apply to the court to review any of the following decisions of the Secretary of State—

- (a) a decision that any of the following conditions was met in relation to the imposition of the temporary exclusion order—
 - (i) condition A;
 - (ii) condition B;
 - (iii) condition C;
 - (iv) condition D;
- (b) a decision to impose the temporary exclusion order;
- (c) a decision that condition B continues to be met;

(d) a decision to impose any of the permitted obligations on the individual by a notice under section 9 of the Act.

4.4 The court has the power to quash the TEO, to give directions to the Secretary of State regarding revocation of the TEO, to quash particular obligations imposed on the individual subject to the TEO and the power to give directions to the Secretary of State regarding the variation or revocation of the TEO.

4.5 A party may appeal (on a question of law) to the Court of Appeal against any decision of the High Court in TEO proceedings.

4.6 All High Court TEO proceedings are likely to involve the use of ‘closed material’ (that is, material the disclosure of which would be contrary to the public interest). TEO proceedings in the Court of Appeal may also involve closed material. Schedule 3 to the Act therefore provides a power to make rules of court, in particular to ensure that in TEO proceedings and appeals closed material may be relied on and is protected. The rule-making powers in Schedule 3 to the Act also enable rules to be made in relation to ‘special advocates’, who, under paragraph 10 of Schedule 3, may be appointed by the Attorney General to represent the interests of anyone other than the Secretary of State in relation to closed evidence and in closed proceedings at which the individual and the individual’s legal representative cannot be present.

4.7 Paragraph 5 of Schedule 3 provides that nothing in the relevant paragraphs of the Schedule or rules made under them (relating to the withholding of material from the individual) is to be read as requiring the court to act in a manner inconsistent with Article 6 (the right to a fair trial) of the European Convention on Human Rights (ECHR).

4.8 Paragraph 7 of Schedule 4 provides that –

- when the rule-making powers are first exercised after the passing of the Act in relation to proceedings in England and Wales, the Lord Chancellor may exercise that power to make the rules (after consulting with the Lord Chief Justice of England and Wales).
- such rules must be laid before Parliament and will cease to have effect unless approved by affirmative resolution of each House within 40 days (excluding periods during which Parliament is dissolved or prorogued or both Houses are adjourned for more than four days).

4.9 These rules are made by the Lord Chancellor in exercise of that power.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales. Separate arrangements are being made in Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 Shailesh Vara, Parliamentary Under Secretary of State for Justice, has made the following statement regarding Human Rights:

In my view the provisions of the Civil Procedure (Amendment) Rules 2015 are compatible with the Convention rights.

7. Policy background

- 7.1 On 29 August 2014, the independent Joint Terrorism Analysis Centre raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE. At least 500 British citizens have travelled to Syria and Iraq, many of whom have joined terrorist groups such as ISIL, and many others have travelled from other countries in Europe and further afield. The emergence of ISIL and the territorial gains they have made in Iraq, present a significant danger not just in the Middle East, but in the UK and across the West. ISIL's murders of British and American journalists have demonstrated the threat the UK faces from terrorism at home and abroad. The police and the security and intelligence agencies need further powers to prevent more people from travelling to Syria and Iraq to fight, and control them on return to the UK, in order to reduce the terrorist threat to the UK.
- 7.2 TEOs will be imposed on certain British citizens who are suspected of engagement in terrorism-related activity abroad. They will allow the Government to temporarily disrupt the return to the UK of such individuals and will ensure that when the individuals do return, they do so in a manner that the Government can control. TEO subjects may also be subject to certain obligations once they have returned, such as reporting to a police station or providing details of changes of address. This power does not render an individual stateless nor exile them from the UK.

8. Consultation outcome

- 8.1 The Lord Chief Justice was consulted on these Rules. Due to the urgency and nature of the power, there has been no public consultation on these specific Rules.

9. Guidance

- 9.1 TEO proceedings will be confined to the High Court and Court of Appeal, and no guidance is considered necessary beyond the Rules themselves

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies of this instrument.
- 10.2 There will be an impact on the courts due to the introduction of new proceedings.
- 10.3 An Impact Assessment has not been prepared for this instrument. An Impact Assessment was prepared for the introduction of TEOs and TEO proceedings in the Act. It can be found on the gov.uk website.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These Rules will form part of the Civil Procedure Rules 1998 which are kept under review by the Civil Procedure Rule Committee. Any subsequent amendment to these Rules will be made by the Civil Procedure Rule Committee.

13. Contact

13.1 The Temporary Exclusion Orders team at the Home Office, tel. 020 7035 8736 or 020 7035 6009 or email: Teo.contact@homeoffice.x.gsi.gov.uk, can answer any queries regarding the instrument.