

SCHEDULES

SCHEDULE 3

Section 12

TEMPORARY EXCLUSION ORDERS: PROCEEDINGS

Introductory

1 In this Schedule—

“appeal proceedings” means proceedings in the Court of Appeal or the Inner House of the Court of Session on an appeal relating to TEO proceedings;

“the relevant court” means—

- (a) in relation to TEO proceedings, the court;
- (b) in relation to appeal proceedings, the Court of Appeal or the Inner House of the Court of Session;

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

“TEO proceedings” means proceedings on—

- (a) an application under section 3,
- (b) a reference under Schedule 2,
- (c) a review under section 11, or
- (d) an application made by virtue of paragraph 6 of this Schedule (application for order requiring anonymity).

Rules of court: general provision

2 (1) A person making rules of court relating to TEO proceedings or appeal proceedings must have regard to the need to secure the following—

- (a) that the decisions that are the subject of the proceedings are properly reviewed, and
- (b) that disclosures of information are not made where they would be contrary to the public interest.

(2) Rules of court relating to TEO proceedings or appeal proceedings may make provision—

- (a) about the mode of proof and about evidence in the proceedings;
- (b) enabling or requiring the proceedings to be determined without a hearing;
- (c) about legal representation in the proceedings;
- (d) 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);

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- (e) enabling the relevant court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of that party);
- (f) about the functions of a person appointed as a special advocate (see paragraph 10);
- (g) enabling the relevant court to give a party to the proceedings a summary of evidence taken in the party's absence.

(3) In this paragraph—

- (a) references to a party to the proceedings do not include the Secretary of State;
- (b) references to a party's legal representative do not include a person appointed as a special advocate.

Rules of court: disclosure

- 3 (1) Rules of court relating to TEO proceedings or appeal proceedings must secure that the Secretary of State is required to disclose—
- (a) material on which the Secretary of State relies,
 - (b) material which adversely affects the Secretary of State's case, and
 - (c) material which supports the case of another party to the proceedings.
- (2) This paragraph is subject to paragraph 4.
- 4 (1) Rules of court relating to TEO proceedings or appeal proceedings must secure—
- (a) that the Secretary of State has the opportunity to make an application to the relevant court for permission not to disclose material otherwise than to the relevant court and 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 relevant 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 relevant court not to disclose material, it must consider requiring the Secretary of State to provide a summary of the material to every party to the proceedings (and every party's legal representative);
 - (e) that the relevant court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest.
- (2) Rules of court relating to TEO proceedings or appeal proceedings must secure that provision to the effect mentioned in sub-paragraph (3) applies in cases where the Secretary of State—
- (a) does not receive the permission of the relevant court to withhold material, but elects not to disclose it, or
 - (b) is required to provide a party to the proceedings with a summary of material that is withheld, but elects not to provide the summary.
- (3) The relevant court must be authorised—
- (a) if it considers that the material or anything that is required to be summarised might adversely affect the Secretary of State's case or support the case of a party to the proceedings, to direct that the Secretary of State—

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- (i) is not to rely on such points in the Secretary of State’s case, or
 - (ii) is to make such concessions or take such other steps as the court may specify, or
 - (b) in any other case, to ensure that the Secretary of State does not rely on the material or (as the case may be) on that which is required to be summarised.
- (4) In this paragraph—
- (a) references to a party to the proceedings do not include the Secretary of State;
 - (b) references to a party’s legal representative do not include a person appointed as a special advocate.

Article 6 rights

- 5 (1) Nothing in paragraphs 2 to 4, or in rules of court made under any of those paragraphs, is to be read as requiring the relevant court to act in a manner inconsistent with Article 6 of the Human Rights Convention.
- (2) The “Human Rights Convention” means the Convention within the meaning of the Human Rights Act 1998 (see section 21(1) of that Act).

Rules of court: anonymity

- 6 (1) Rules of court relating to TEO proceedings may make provision for—
- (a) the making by the Secretary of State or the relevant individual of an application to the court for an order requiring anonymity for that individual, 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 TEO 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 appeal proceedings requiring anonymity for the relevant individual.
- (3) In sub-paragraphs (1) and (2) the references, in relation to a court, to an order requiring anonymity for the relevant individual 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 relevant individual or of any information that would tend to identify the relevant individual.
- (4) In this paragraph “relevant individual” means an individual on whom the Secretary of State is proposing to impose, or has imposed, a temporary exclusion order.

Initial exercise of rule-making powers by Lord Chancellor

- 7 (1) The first time after the passing of this Act that rules of court are made in exercise of the powers conferred by this Schedule in relation to proceedings in England and

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Wales or in Northern Ireland, the rules may be made by the Lord Chancellor instead of by the person who would otherwise make them.

- (2) Before making rules of court under sub-paragraph (1), 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.
- (3) But the Lord Chancellor is not required to undertake any other consultation before making the rules.
- (4) A requirement to consult under sub-paragraph (2) 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 under sub-paragraph (1)—
 - (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) In determining that period of 40 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (7) If rules cease to have effect in accordance with sub-paragraph (5)—
 - (a) that does not affect anything done in previous reliance on the rules, and
 - (b) sub-paragraph (1) applies again as if the rules had not been made.
- (8) The following provisions do not apply to rules of court made by the Lord Chancellor under this paragraph—
 - (a) section 3(6) of the Civil Procedure Act 1997 (parliamentary procedure for civil procedure rules);
 - (b) section 56(1), (2) and (4) of the Judicature (Northern Ireland) Act 1978 (statutory rules procedure).
- (9) Until the coming into force of section 85 of the Courts Act 2003, the reference in sub-paragraph (8)(a) to section 3(6) of the Civil Procedure Act 1997 is to be read as a reference to section 3(2) of that Act.

Use of advisers

- 8 (1) In any TEO proceedings or appeal proceedings the relevant court may if it thinks fit—
 - (a) call in aid one or more advisers appointed for the purposes of this paragraph by the Lord Chancellor, and
 - (b) hear and dispose of the proceedings with the assistance of the adviser or advisers.
- (2) The Lord Chancellor may appoint advisers for the purposes of this paragraph only with the approval of—
 - (a) the Lord President of the Court of Session, in relation to an adviser who may be called in aid wholly or mainly in Scotland;

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- (b) the Lord Chief Justice of Northern Ireland, in relation to an adviser who may be called in aid wholly or mainly in Northern Ireland;
 - (c) the Lord Chief Justice of England and Wales, in any other case.
 - (3) Rules of court may regulate the use of advisers in proceedings who are called in aid under sub-paragraph (1).
 - (4) The Lord Chancellor may pay such remuneration, expenses and allowances to advisers appointed for the purposes of this paragraph as the Lord Chancellor may determine.
- 9
- (1) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise the function under paragraph 8(2)(a).
 - (2) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise the function under paragraph 8(2)(b)—
 - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
 - (3) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the function under paragraph 8(2)(c).

Appointment of special advocate

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- (1) The appropriate law officer may appoint a person to represent the interests of a party in any TEO proceedings or appeal proceedings from which the party (and any legal representative of the party) is excluded.
 - (2) A person appointed under sub-paragraph (1) is referred to in this Schedule as appointed as a “special advocate”.
 - (3) The “appropriate law officer” is—
 - (a) in relation to proceedings in England and Wales, the Attorney General;
 - (b) in relation to proceedings in Scotland, the Advocate General for Scotland;
 - (c) in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.
 - (4) A person appointed as a special advocate is not responsible to the party to the proceedings whose interests the person is appointed to represent.
 - (5) A person may be appointed as a special advocate only if—
 - (a) in the case of an appointment by the Attorney General, the person has a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990;
 - (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) in the case of an appointment by the Advocate General for Northern Ireland, the person is a member of the Bar of Northern Ireland.

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Relationship with other powers to make rules of court and other proceedings

- 11 Nothing in this Schedule is to be read as restricting—
- (a) the power to make rules of court or the matters to be taken into account when doing so, or
 - (b) the application of sections 6 to 14 of the Justice and Security Act 2013 (closed material proceedings).