

2005 No. 153

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment No.
4) (Prevention of Terrorism Act 2005) 2005**

Made - - - - - *15th March 2005*

Coming into force *16th March 2005*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(a) and paragraph 4 of the Schedule to the Prevention of Terrorism Act 2005(b) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Prevention of Terrorism Act 2005) 2005 and shall come into force on 16th March 2005.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(c) shall be amended in accordance with the following sub-paragraphs.

(2) At the end there shall be inserted the following:—

“CHAPTER 89

PREVENTION OF TERRORISM ACT 2005

Interpretation and application of this Chapter

89.1.—(1) In this Chapter—

“the Act of 2005” means the Prevention of Terrorism Act 2005;

“control order proceedings” has the same meaning as in section 11(6) of the Act of 2005;

“controlled person” has the same meaning as in section 15(1) of the Act of 2005 but, where the context so requires, also means an individual against whom the Secretary of

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3) and by the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45.

(b) 2005 c.2.

(c) S.I. 1994/1443, last amended by S.S.I. 2005/148.

State is proposing to make a non-derogating control order or an individual against whom a derogating control order is sought under section 4(1) of the Act of 2005;

“derogating control order” has the same meaning as in section 15(1) of the Act of 2005;

“non-derogating control order” has the same meaning as in section 15(1) of the Act of 2005;

“relevant appeal proceedings” has the same meaning as in paragraph 1(2) of the Schedule to the Act of 2005;

“relevant material” has the same meaning as in paragraph 4(5) of the Schedule to the Act of 2005;

“relevant party” has the same meaning as in paragraph 11 of the Schedule to the Act of 2005; and

“special representative” means a person appointed under paragraph 7 of the Schedule to the Act of 2005.

(2) This Chapter applies to control order proceedings and relevant appeal proceedings.

Control orders: petitions

89.2.—(1) The following shall be made by lodging a petition with the Deputy Principal Clerk:—

an application under section 3(1)(a) of the Act of 2005 for permission to make a non-derogating control order,

a reference under section 3(3)(a) of the Act of 2005 of a non-derogating control order,

an application under section 4(1) of the Act of 2005 for the making of a derogating control order.

(2) The following rules shall not apply to the petition:—

rule 4.3 (lodging of processes),

rule 4.4 (steps of process),

rule 4.5(1)(b) (copy inventory of productions to be sent to other parties),

rule 4.6 (intimation of steps of process),

rule 4.11 (documents not to be borrowed),

rule 4.12 (borrowing and returning documents),

rule 14.5 (first order in petitions),

rule 14.6 (period of notice for lodging answers),

rule 14.7 (intimation and service of petitions),

rule 14.8 (procedure where answers lodged),

rule 14.9 (unopposed petitions).

(3) Subject to rule 89.7 (permission not to disclose relevant material etc.), the petition shall include, in numbered paragraphs, statements of reasons—

(a) to support the making of the control order; and

(b) for imposing each of the obligations under the control order.

(4) Subject to rule 89.7, there shall be lodged with the petition—

(a) the productions of the Secretary of State;

- (b) in the case of an application under section 3(1)(a) for permission to make a non-derogating control order, a copy of the proposed control order;
- (c) in the case of a reference under section 3(3)(a) of the Act of 2005 of a non-derogating control order, a copy of the control order; and
- (d) in the case of an application under section 4(1) of the Act of 2005 for the making of a derogating control order against an individual, a draft of the control order sought.

(5) Subject to rule 89.7, at the same time that the petition is lodged, a copy of the petition and copies of the productions and documents mentioned in paragraph (4) shall be served by the Secretary of State on the controlled person.

Preliminary hearings and initial diets

89.3.—(1) On receipt of a petition under rule 89.2 (control orders: petitions), the Deputy Principal Clerk shall—

(a) in the case of an application under section 3(1)(a) for permission to make a non-derogating control order or a reference under section 3(3)(a) of the Act of 2005 of a non-derogating control order, allocate an initial diet for the court’s consideration to begin; and

(b) in the case of an application under section 4(1) of the Act of 2005 for a derogating control order, allocate a preliminary hearing under section 4(1)(a) of the Act of 2005.

(2) The Deputy Principal Clerk shall notify the date and time of a preliminary hearing to the Secretary of State and, unless the Lord Ordinary orders otherwise, shall use reasonable endeavours to notify the date and time of that hearing to the controlled person and any special representative.

(3) The fact that the controlled person or any special representative has not received notification of the preliminary hearing shall not affect the holding of that hearing.

(4) The Deputy Principal Clerk shall notify the date and time of an initial diet to the Secretary of State and, unless the Lord Ordinary orders otherwise, the controlled person and any special representative.

(5) The controlled person shall, not later than the date of the preliminary hearing or initial diet, lodge with the Deputy Principal Clerk and serve on the Secretary of State a copy of any answers and productions that are to be founded upon by the controlled person at the preliminary hearing or initial diet.

(6) Where a special representative is appointed for the purposes of a preliminary hearing or initial diet, he shall lodge with the Deputy Principal Clerk and serve on the Secretary of State a copy of any answers that are to be founded upon by the special representative at the preliminary hearing or initial diet.

(7) At a preliminary hearing or initial diet, the parties present shall state their proposals for further procedure in respect of any hearing in pursuance of directions under section 3(2)(c), (6)(b) or (c) or any full hearing under section 4(1)(b) of the Act of 2005, and the interlocutor of the Lord Ordinary giving directions for the carrying out of any such hearing shall include such order for further procedure as he thinks fit, subject, where applicable, to section 3(7) of the Act of 2005.

(8) Where a preliminary hearing or initial diet has been held in the absence of the controlled person the Deputy Principal Clerk shall serve a copy of the interlocutor of the Lord Ordinary on that person.

Applications for renewal, revocation or modification of derogating control orders

89.4.—(1) An application—

(a) under section 4(9) of the Act of 2005 for the renewal of a derogating control order; or

(b) under section 7(4) of the Act of 2005 for the revocation of a derogating control order or for the modification of obligations imposed by such an order, shall be made by note.

(2) A note referred to in paragraph (1) shall be lodged with the Deputy Principal Clerk.

Appeals relating to non-derogating orders

89.5.—(1) Subject to paragraphs (2), (3) and (4) and to the modifications set out in rule 41.43 (application of Parts II and III to Part X), Part III of Chapter 41 (appeals to Lord Ordinary under statute)(a) shall apply to appeals under section 10 (appeals relating to non-derogating control orders) of the Act of 2005.

(2) An appeal under section 10 of the Act of 2005 shall be lodged with the Deputy Principal Clerk and served on the Secretary of State within 28 days after the date on which the controlled person received notice of—

- (a) the control order that is the subject of the appeal, or
- (b) the decision by the Secretary of State on an application for the revocation of the control order, or the modification of an obligation imposed by the control order.

(3) In a case where the Secretary of State has failed to determine an application for the revocation of the control order, or for the modification of an obligation imposed by such an order, any appeal under section 10 of the Act of 2005 shall be lodged—

- (a) no earlier than 28 days before; and
- (b) no later than 42 days after,

the date on which the application was made.

Appointment of special representatives

89.6.—(1) Subject to paragraph (2), the Secretary of State shall, upon—

- (a) making any application or reference under the Act of 2005;
- (b) making any motion in respect of control order proceedings or relevant appeal proceedings; or
- (c) being served with a note of appeal, reclaiming motion or other application in respect of control order proceedings or relevant appeal proceedings,

give notice to the Advocate General.

(2) Paragraph (1) applies unless—

- (a) the Secretary of State does not intend to—
 - (i) oppose the appeal, reclaiming motion or other application; or
 - (ii) make an application under rule 89.7 (permission not to disclose relevant material etc.); or
- (b) a special representative has already been appointed to represent the interests of the controlled person in the proceedings.

(3) Where notice is given to the Advocate General under paragraph (1), the Advocate General may appoint a special representative to represent the interests of the controlled person in the proceedings.

(4) Where there are any control order proceedings or relevant appeal proceedings but no special representative has been appointed, the controlled person or the Secretary of State may at any time request the Advocate General to appoint a special representative.

(a) Part III was amended by S.I. 1994/2901 and S.I. 1996/1756.

(5) On the appointment of any special representative, the Advocate General shall intimate the name of the special representative the Deputy Principal Clerk in writing.

(6) The special representative may address the court in any control order proceedings or relevant appeal proceedings from which the controlled person is excluded.

Permission not to disclose relevant material etc.

89.7.—(1) Subject to paragraph (2), the Secretary of State shall lodge as productions all relevant material.

(2) The Secretary of State may apply by motion for permission not to disclose relevant material.

(3) The Secretary of State shall not require to disclose to the controlled person any relevant material which is the subject of an application under paragraph (2).

(4) The Secretary of State shall not rely upon any relevant material, which is the subject of an application under paragraph (2) unless a special representative has been appointed.

(5) Where the Secretary of State makes an application under paragraph (2) and a special representative has been appointed, he shall lodge with the Deputy Principal Clerk and serve on the special representative—

- (a) the relevant material;
- (b) a statement of the reasons for the application for permission not to disclose the relevant material; and
- (c) if and to the extent that it is possible to do so without disclosing information contrary to the public interest, a summary of the relevant material which can be served on the controlled person.

Applications for permission not to disclose relevant material: further provisions

89.8.—(1) On the making of an application under rule 89.7(2) (permission not to disclose relevant material etc.), the court shall, unless paragraph (2) applies, direct the Deputy Principal Clerk to allocate a diet for a hearing of the application and the Deputy Principal Clerk shall intimate that date and time in writing to the Secretary of State and to any special representative appointed under rule 89.6 (appointment of special representatives).

(2) This paragraph applies where—

- (a) the special representative gives notice that he does not oppose an application under rule 89.7(2);
- (b) the court has previously considered an application by the Secretary of State for prohibition of disclosure of the same or substantially the same matters, and is satisfied that it would be just to prohibit disclosure without a hearing; or
- (c) the Secretary of State and the special representative consent to the court deciding the issue without a hearing.

(3) An application under rule 89.7(2) shall be considered in the absence of the controlled person and his legal representative.

(4) The court shall grant an application under rule 89.7(2) where it considers that the disclosure of the relevant material would be contrary to the public interest.

(5) On granting an application under rule 89(2), the court shall order the Secretary of State to serve upon the controlled person, a copy of the summary lodged under rule 89.7(5)(c) unless the court considers that the summary contains information or other material the disclosure of which would be contrary to the public interest.

(6) In a case where the Secretary of State elects not to disclose the relevant material or (as the case may be) not to provide the summary, the court may—

(a) if it considers that the relevant material or anything that is required to be summarised might be of assistance to a relevant party in relation to a matter under consideration by the court, order that the matter is withdrawn from consideration by the court;

(b) in any other case, the court shall ensure that the Secretary of State does not rely in the proceedings on the material or (as the case may be) on what is required to be summarised.

Anonymity

89.9. The Secretary of State or the controlled person may apply for an order requiring anonymity for the controlled person—

(a) in control order proceedings or relevant appeal proceedings, by motion;

(b) where there are no control order proceedings or relevant appeal proceedings, by lodging a petition with the Deputy Principal Clerk.

Exclusion from diets or hearings etc.

89.10.—(1) If the court considers it necessary for the controlled person and his legal representative, or any other relevant party, to be excluded from a diet or hearing or part of diet or a hearing to secure that information is not disclosed contrary to the public interest, it shall—

(a) make an order in that respect; and

(b) conduct the diet or hearing, or that part of it from which the controlled person and his legal representative are excluded, in private.

(2) The court may otherwise order a diet or hearing to be conducted in private if it thinks fit.

(3) When the court issues an opinion in any proceedings to which this Chapter applies, the court 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.

(4) Where an opinion of the court does not include the full reasons for its decision—

(a) the court shall prepare a separate opinion including those reasons; and

(b) the Deputy Principal Clerk shall serve that separate opinion on the Secretary of State and the special representative.

Recording of control order proceedings

89.11.—(1) Control order proceedings shall be recorded by—

(a) a shorthand writer to whom the oath *de fidei administratione officii* has been administered on his appointment as a shorthand writer in the Court of Session; or

(b) tape recording or other mechanical means approved by the Lord President.

(2) The record of the proceedings shall include—

(a) any objection to a question or line of evidence;

(b) any submission made in relation to such an objection; and

(c) the ruling of the court in relation to the objection and submission.

(3) A transcript of the record of the proceedings shall only be made on the direction of the court and shall be subject to such order as to the cost of the transcript as the court thinks fit.

(4) The transcript of the record of the proceedings shall be certified as a faithful record of the proceedings by—

(a) the shorthand writer or shorthand writers, if more than one, who recorded the evidence; or

(b) where the evidence was recorded by tape recording or other mechanical means, the person who transcribed the record.

(5) The court may make such alterations to the transcript of the record of the proceedings as appear to it to be necessary after hearing the parties; and where such alterations are made, the court shall authenticate the alterations.”.

Cullen of Whitekirk
Lord President
I.P.D.

Edinburgh
15th March 2005

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994 (S.I. 1994/1443) (“the Rules”) to make provision in respect of proceedings under the Prevention of Terrorism Act 2005 (“the 2005 Act”).

Paragraph 2(2) inserts a new Chapter 89 at the end of the Rules. The new Chapter applies to proceedings in the Outer House of the Court of Session and appeals to the Inner House of the Court of Session on a point of law in respect of those proceedings.

New rule 89.2 sets out the procedure for making applications under section 3(1) of the 2005 Act (application for permission to make a non-derogating control order), references under section 3(3)(a) of the 2005 Act (reference of urgent non-derogating control order) and applications under section 4(1) of the 2005 Act (application for derogating control order).

New rule 89.3 makes provision for initial diets and preliminary hearings to be held in respect of proceedings under rule 89.2.

New rule 89.4 sets out the procedure for making applications for the renewal, revocation or modification of derogating control orders

New rule 89.5 sets out the procedure for making an appeal under section 10 of the 2005 Act (appeals in respect of non-derogating control orders).

New rule 89.6 makes provision concerning the appointment of special representatives by the Advocate General to represent individuals when they are excluded from control order proceedings.

New rule 89.7 makes provision for the Secretary of State to apply to the court for permission not to disclose information in proceedings under the 2005 Act.

New rule 89.8 makes further provision in relation to the procedure to be followed in applications under new rule 89.7.

New rule 89.9 makes provision for applications for anonymity in proceedings under the 2005 Act.

New rule 89.10 makes provision for the exclusion of a controlled person and his legal representative from proceedings under the 2005 Act.

New rule 89.11 makes provision in respect of the recording of control order proceedings.

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