

SCHEDULES

SCHEDULE 1

Section 1

SEIZURE OF PASSPORTS ETC FROM PERSONS SUSPECTED OF INVOLVEMENT IN TERRORISM

Interpretation

- 1 (1) The following definitions have effect for the purposes of this Schedule.
- (2) “Immigration officer” means a person who is appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.
- (3) “Customs official” means a person who is designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009 or as a customs revenue official under section 11(1) of that Act.
- (4) “Qualified officer” means an immigration officer or customs official who is designated by the Secretary of State for the purposes of this Schedule.
- (5) “Senior police officer” means a police officer of at least the rank of superintendent.
- (6) “Travel document” means anything that is or appears to be—
 - (a) a passport, or
 - (b) a ticket or other document that permits a person to make a journey by any means from a place within Great Britain to a place outside Great Britain, or from a place within Northern Ireland to a place outside the United Kingdom.
- (7) “Passport” means—
 - (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
 - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or
 - (c) a document that can be used (in some or all circumstances) instead of a passport.
- (8) “Port” means—
 - (a) an airport,
 - (b) a sea port,
 - (c) a hoverport,
 - (d) a heliport,
 - (e) a railway station where passenger trains depart for, or arrive from, places outside the United Kingdom, or
 - (f) any other place at which a person is able, or attempting, to get on or off any craft, vessel or vehicle in connection with entering or leaving Great Britain or Northern Ireland.

Status: This is the original version (as it was originally enacted).

- (9) A place is “in the border area” if it is in Northern Ireland and is no more than one mile from the border between Northern Ireland and the Republic of Ireland.
- (10) “Involvement in terrorism-related activity” is any one or more of the following—
- (a) the commission, preparation or instigation of acts of terrorism;
 - (b) conduct that facilitates the commission, preparation or instigation of such acts, or is intended to do so;
 - (c) conduct that gives encouragement to the commission, preparation or instigation of such acts, or is intended to do so;
 - (d) conduct that gives support or assistance to individuals who are known or believed by the person concerned to be involved in conduct falling within paragraph (a).

It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general.

- (11) “Terrorism” and “terrorist” have the same meaning as in the Terrorism Act 2000 (see sections 1(1) to (4) and 40 of that Act).
- (12) “Judicial authority” means—
- (a) in England and Wales, a District Judge (Magistrates’ Courts) who is—
 - (i) designated under paragraph 29(4)(a) of Schedule 8 to the Terrorism Act 2000, or
 - (ii) designated for the purposes of this Schedule by the Lord Chief Justice of England and Wales;
 - (b) in Scotland, the sheriff;
 - (c) in Northern Ireland, a county court judge, or a district judge (magistrates’ courts) who is—
 - (i) designated under paragraph 29(4)(c) of Schedule 8 to the Terrorism Act 2000, or
 - (ii) designated for the purposes of this Schedule by the Lord Chief Justice of Northern Ireland.
- (13) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his or her functions under sub-paragraph (12)(a)(ii).
- (14) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his or her functions under sub-paragraph (12)(c)(ii)—
- (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).
- (15) “The 14-day period” and “the 30-day period” have the meanings given by paragraphs 5(2) and 8(7) respectively.

Powers of search and seizure etc

- 2 (1) This paragraph applies in the case of a person at a port in Great Britain if a constable has reasonable grounds to suspect that the person—
- (a) is there with the intention of leaving Great Britain for the purpose of involvement in terrorism-related activity outside the United Kingdom, or

Status: This is the original version (as it was originally enacted).

- (b) has arrived in Great Britain with the intention of leaving it soon for that purpose.
- (2) This paragraph applies in the case of a person at a port in Northern Ireland, or in the border area, if a constable has reasonable grounds to suspect that the person—
- (a) is there with the intention of leaving the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom, or
 - (b) has arrived in Northern Ireland with the intention of leaving the United Kingdom soon for that purpose.
- (3) The constable may—
- (a) exercise any of the powers in sub-paragraph (5) in the case of the person, or
 - (b) direct a qualified officer to do so.
- (4) A qualified officer must (if able to do so) comply with any direction given by a constable under sub-paragraph (3)(b).
- (5) The powers are—
- (a) to require the person to hand over all travel documents in his or her possession to the constable or (as the case may be) the qualified officer;
 - (b) to search for travel documents relating to the person and to take possession of any that the constable or officer finds;
 - (c) to inspect any travel document relating to the person;
 - (d) to retain any travel document relating to the person that is lawfully in the possession of the constable or officer.
- (6) The power in sub-paragraph (5)(b) is a power to search—
- (a) the person;
 - (b) anything that the person has with him or her;
 - (c) any vehicle in which the officer believes the person to have been travelling or to be about to travel.
- (7) A constable or qualified officer—
- (a) may stop a person or vehicle for the purpose of exercising a power in sub-paragraph (5)(a) or (b);
 - (b) may if necessary use reasonable force for the purpose of exercising a power in sub-paragraph (5)(a) or (b);
 - (c) may authorise a person to carry out on the constable’s or officer’s behalf a search under sub-paragraph (5)(b).
- (8) A constable or qualified officer exercising a power in sub-paragraph (5)(a) or (b) must tell the person that—
- (a) the person is suspected of intending to leave Great Britain or (as the case may be) the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom, and
 - (b) the constable or officer is therefore entitled under this Schedule to exercise the power.
- (9) Where a travel document relating to the person is in the possession of an immigration officer or customs official (whether a qualified officer or not), the constable may direct the officer or official—
- (a) to pass the document to a constable as soon as practicable, and

- (b) in the meantime to retain it.

The officer or official must comply with any such direction.

Travel documents in possession of immigration officers or customs officials

- 3 (1) Where—
- (a) a travel document lawfully comes into the possession of an immigration officer or customs official (whether a qualified officer or not) without a power under paragraph 2 being exercised, and
 - (b) as soon as possible after taking possession of the document, the officer or official asks a constable whether the constable wishes to give a direction under paragraph 2(9) in relation to the document,
- the officer or official may retain the document until the constable tells him or her whether or not the constable wishes to give such a direction.
- (2) A request under sub-paragraph (1) must be considered as soon as possible.

Authorisation by senior police officer for retention of travel document

- 4 (1) Where a travel document is in the possession of a constable or qualified officer as a result of the exercise of a power under paragraph 2, the relevant constable must as soon as possible either—
- (a) seek authorisation from a senior police officer for the document to be retained, or
 - (b) ensure that the document is returned to the person to whom it relates.
- “The relevant constable” means the constable by whom, or on whose direction, the power was exercised.
- (2) The document may be retained while an application for authorisation is considered.
- (3) A constable or qualified officer retaining a travel document under sub-paragraph (2) must tell the person to whom the document relates that—
- (a) the person is suspected of intending to leave Great Britain or (as the case may be) the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom, and
 - (b) the constable or officer is therefore entitled under this Schedule to retain the document while the matter is considered by a senior police officer.

This does not apply if the constable or qualified officer expects the application for authorisation to be dealt with immediately, or if sub-paragraph (4) has been complied with.

- (4) An immigration officer or customs official to whom a direction is given under paragraph 2(9) must tell the person to whom the travel document in question relates that—
- (a) the person is suspected of intending to leave Great Britain or (as the case may be) the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom, and
 - (b) a constable is therefore entitled under this Schedule to retain the document while the matter is considered by a senior police officer.

Status: This is the original version (as it was originally enacted).

This does not apply if the immigration officer or customs official expects the application for authorisation to be dealt with immediately.

- (5) If an application for authorisation is granted—
 - (a) the travel document must be passed to a constable if it is not already in the possession of a constable, and
 - (b) paragraph 5 applies.
- (6) If an application for authorisation is refused, the travel document must be returned to the person as soon as possible.
- (7) A senior police officer may grant an application for authorisation only if satisfied that there are reasonable grounds for the suspicion referred to in paragraph 2(1) or (2).
- (8) An authorisation need not be in writing.
- (9) Sub-paragraphs (1)(b) and (6) are subject to paragraph 7 and to any power or provision not in this Schedule under which the document may be lawfully retained or otherwise dealt with.

Retention or return of documents seized

- 5 (1) Where authorisation is given under paragraph 4 for a travel document relating to a person to be retained, it may continue to be retained—
 - (a) while the Secretary of State considers whether to cancel the person's passport,
 - (b) while consideration is given to charging the person with an offence,
 - (c) while consideration is given to making the person subject to any order or measure to be made or imposed by a court, or by the Secretary of State, for purposes connected with protecting members of the public from a risk of terrorism, or
 - (d) while steps are taken to carry out any of the actions mentioned in paragraphs (a) to (c).
- (2) But a travel document may not be retained under this Schedule after the end of the period of 14 days beginning with the day after the document was taken (“the 14-day period”), unless that period is extended under paragraph 8 or 11(3).
- (3) The travel document must be returned to the person as soon as possible—
 - (a) once the 14-day period (or the 14-day period as extended under paragraph 8 or 11(3)) expires;
 - (b) once the power in sub-paragraph (1) ceases to apply, if that happens earlier.

This is subject to paragraph 7 and to any power or provision not in this Schedule under which the document may be lawfully retained or otherwise dealt with.
- (4) The constable to whom a travel document is passed under paragraph 2(9) or 4(5)(a), or who is in possession of it when authorisation is given under paragraph 4, must explain to the person the effect of sub-paragraphs (1) to (3).
- (5) The constable must also tell the person, if he or she has not been told already under paragraph 2(8) or 4(3) or (4), that the person is suspected of intending to leave Great Britain or (as the case may be) the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom.

Review of retention of travel documents

- 6 (1) This paragraph applies where—
- (a) authorisation is given under paragraph 4 for a travel document relating to a person to be retained, and
 - (b) the document is still being retained by a constable at the end of the period of 72 hours beginning when the document was taken from the person (“the 72-hour period”).
- (2) A police officer who is—
- (a) of at least the rank of chief superintendent, and
 - (b) of at least as high a rank as the senior police officer who gave the authorisation,
- must carry out a review of whether the decision to give authorisation was flawed.
- (3) The reviewing officer must—
- (a) begin carrying out the review within the 72-hour period,
 - (b) complete the review as soon as possible, and
 - (c) communicate the findings of the review in writing to the relevant chief constable.
- (4) The relevant chief constable must consider those findings and take whatever action seems appropriate.
- (5) If a power under paragraph 2 was exercised in relation to the travel document by an immigration officer or customs official designated under paragraph 17, the reviewing officer must also communicate the findings of the review in writing to the Secretary of State.
- (6) In this paragraph—
- “reviewing officer” means the officer carrying out a review under this paragraph;
- “relevant chief constable” means—
- (a) (except where paragraph (b) or (c) applies) the chief officer of police under whose direction and control is the constable retaining the document;
 - (b) the chief constable of the Police Service of Scotland, if the constable retaining the document is under that chief constable’s direction and control;
 - (c) the chief constable of the Police Service of Northern Ireland, if the constable retaining the document is under that chief constable’s direction and control.

Detention of document for criminal proceedings etc

- 7 (1) A requirement under paragraph 4 or 5 to return a travel document in the possession of a constable or qualified officer does not apply while the constable or officer has power to detain it under sub-paragraph (2).
- (2) The constable or qualified officer may detain the document—
- (a) while the constable or officer believes that it may be needed for use as evidence in criminal proceedings, or

Status: This is the original version (as it was originally enacted).

- (b) while the constable or officer believes that it may be needed in connection with a decision by the Secretary of State whether to make a deportation order under the Immigration Act 1971.

Extension of 14-day period by judicial authority

- 8
- (1) A senior police officer may apply to a judicial authority for an extension of the 14-day period.
 - (2) An application must be made before the end of the 14-day period.
 - (3) An application may be heard only if reasonable efforts have been made to give to the person to whom the application relates a notice stating—
 - (a) the time when the application was made;
 - (b) the time and place at which it is to be heard.
 - (4) On an application—
 - (a) the judicial authority must grant an extension if satisfied that the relevant persons have been acting diligently and expeditiously in relation to the matters and steps referred to in sub-paragraph (5);
 - (b) otherwise, the judicial authority must refuse to grant an extension.
 - (5) In sub-paragraph (4) “the relevant persons” means—
 - (a) the persons responsible for considering whichever of the matters referred to in paragraph 5(1)(a) to (c) are under consideration, and
 - (b) the persons responsible for taking whichever of the steps referred to in paragraph 5(1)(d) are being taken or are intended to be taken.
 - (6) An extension must be for a further period ending no later than the end of the 30-day period.
 - (7) “The 30-day period” means the period of 30 days beginning with the day after the document in question was taken.
- 9
- (1) The person to whom an application under paragraph 8 relates—
 - (a) must be given an opportunity to make oral or written representations to the judicial authority about the application;
 - (b) subject to sub-paragraph (3), is entitled to be legally represented at the hearing.
 - (2) A judicial authority must adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where the person—
 - (a) is not legally represented,
 - (b) is entitled to be legally represented, and
 - (c) wishes to be legally represented.
 - (3) A judicial authority may exclude any of the following persons from any part of the hearing—
 - (a) the person to whom the application relates;
 - (b) anyone representing that person.
- 10
- (1) A person who has made an application under paragraph 8 may apply to the judicial authority for an order that specified information upon which he or she intends to rely be withheld from—

Status: This is the original version (as it was originally enacted).

- (a) the person to whom the application relates, and
 - (b) anyone representing that person.
- (2) A judicial authority may make an order under sub-paragraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information was disclosed—
- (a) evidence of an offence under any of the provisions mentioned in section 40(1)(a) of the Terrorism Act 2000 would be interfered with or harmed,
 - (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered,
 - (c) the recovery of property in respect of which a forfeiture order could be made under section 23 or 23A of that Act would be hindered,
 - (d) the apprehension, prosecution or conviction of a person who is suspected of being a terrorist would be made more difficult as a result of the person being alerted,
 - (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted,
 - (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with,
 - (g) a person would be interfered with or physically injured, or
 - (h) national security would be put at risk.
- (3) The judicial authority must direct that the following be excluded from the hearing of an application under this paragraph—
- (a) the person to whom the application under paragraph 8 relates;
 - (b) anyone representing that person.
- 11 (1) A judicial authority may adjourn the hearing of an application under paragraph 8 only if the hearing is adjourned to a date before the expiry of the 14-day period.
- (2) Sub-paragraph (1) does not apply to an adjournment under paragraph 9(2).
- (3) If an application is adjourned under paragraph 9(2) to a date after the expiry of the 14-day period, the judicial authority must extend the period until that date.
- 12 (1) If an extension is granted under paragraph 8 for a period ending before the end of the 30-day period, one further application may be made under that paragraph.
- (2) Paragraphs 8 to 11 apply to a further application as if references to the 14-day period were references to that period as previously extended.

Restriction on repeated use of powers

- 13 (1) Where—
- (a) a power under paragraph 4 or 5 to retain a document relating to a person is exercised, and
 - (b) powers under this Schedule have been exercised in the same person's case on two or more occasions in the previous 6 months,
- this Schedule has effect with the following modifications.
- (2) References to 14 days (in paragraph 5(2) and elsewhere) are to be read as references to 5 days.

Status: This is the original version (as it was originally enacted).

- (3) Paragraph 8 has effect as if the following were substituted for sub-paragraph (4)—
- “(4) On an application, the judicial authority must grant an extension if satisfied that—
- (a) the relevant persons have been acting diligently and expeditiously in relation to the matters and steps referred to in sub-paragraph (5), and
 - (b) there are exceptional circumstances justifying the further use of powers under this Schedule in relation to the same person.
- Otherwise, the judicial authority must refuse to grant an extension.”

Persons unable to leave the United Kingdom

- 14 (1) This paragraph applies where a person’s travel documents are retained under this Schedule with the result that, for the period during which they are so retained (“the relevant period”), the person is unable to leave the United Kingdom.
- (2) The Secretary of State may make whatever arrangements he or she thinks appropriate in relation to the person—
- (a) during the relevant period;
 - (b) on the relevant period coming to an end.
- (3) If at any time during the relevant period the person does not have leave to enter or remain in the United Kingdom, the person’s presence in the United Kingdom at that time is nevertheless not unlawful for the purposes of the Immigration Act 1971.

Offences

- 15 (1) A person who is required under paragraph 2(5)(a) to hand over all travel documents in the person’s possession commits an offence if he or she fails without reasonable excuse to do so.
- (2) A person who intentionally obstructs, or seeks to frustrate, a search under paragraph 2 commits an offence.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction—
- (a) to imprisonment for a term not exceeding 6 months, or
 - (b) to a fine, which in Scotland or Northern Ireland may not exceed level 5 on the standard scale,
- or to both.
- 16 A qualified officer exercising a power under paragraph 2 has the same powers of arrest without warrant as a constable in relation to an offence under paragraph 15.

Accredited immigration officers and customs officials

- 17 (1) For the purposes of this paragraph, a qualified officer is an “accredited” immigration officer or customs official if designated as such by the Secretary of State.
- (2) Sub-paragraphs (1), (2) and (3)(a) of paragraph 2 apply to an accredited immigration officer or customs official as they apply to a constable.

Status: This is the original version (as it was originally enacted).

- (3) In paragraph 2(3)(b) and (4) “qualified officer” does not include an accredited immigration officer or customs official.
- (4) In paragraphs 2(9) and 3 “immigration officer or customs official” does not include an accredited immigration officer or customs official.
- (5) Paragraph 4(1) has effect, in relation to a travel document that is in the possession of an accredited immigration officer or customs official as a result of the exercise of a power under paragraph 2 by that officer or official, as if the reference to the relevant constable were a reference to that officer or official.

Code of practice

- 18 (1) The Secretary of State must issue a code of practice with regard to the exercise of functions under this Schedule.
- (2) The code of practice must in particular deal with the following matters—
 - (a) the procedure for making designations under paragraphs 1(4) and 17;
 - (b) training to be undertaken by persons who are to exercise powers under this Schedule;
 - (c) the exercise by constables, immigration officers and customs officials of functions conferred on them by virtue of this Schedule;
 - (d) information to be given to a person in whose case a power under this Schedule is exercised;
 - (e) how and when that information is to be given;
 - (f) reviews under paragraph 6.
- (3) A constable, immigration officer or customs official must perform functions conferred on him or her by virtue of this Schedule in accordance with any relevant provision included in the code by virtue of sub-paragraph (2)(c) to (e).
- (4) The failure by a constable, immigration officer or customs official to observe any such provision does not of itself make him or her liable to criminal or civil proceedings.
- (5) The code of practice—
 - (a) is admissible in evidence in criminal and civil proceedings;
 - (b) is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- 19 (1) Before issuing the code of practice the Secretary of State must—
 - (a) publish it in draft,
 - (b) consider any representations made about the draft, and
 - (c) if the Secretary of State thinks it appropriate, modify the draft in the light of any representations made.
- (2) The Secretary of State must lay a draft of the code before Parliament.
- (3) Anything done before the day on which this Act is passed is as valid as if done on or after that day for the purposes of sub-paragraphs (1) and (2).
- (4) Once the code has been laid in draft before Parliament the Secretary of State may bring it into operation by regulations made by statutory instrument.

Status: This is the original version (as it was originally enacted).

- (5) The first regulations under sub-paragraph (4) cease to have effect at the end of the period of 40 days beginning with the day on which the Secretary of State makes the regulations, unless a resolution approving the regulations is passed by each House of Parliament during that period.
 - (6) A statutory instrument containing any subsequent regulations under sub-paragraph (4) may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.
 - (7) If regulations cease to have effect under sub-paragraph (5)—
 - (a) the code of practice to which the regulations relate also ceases to have effect, but
 - (b) that does not affect anything previously done, or the power to make new regulations or to issue a new code.
 - (8) For the purposes of sub-paragraph (5), the period of 40 days is to be computed in accordance with section 7(1) of the Statutory Instruments Act 1946.
- 20 (1) The Secretary of State may revise the code of practice and issue the revised code.
- (2) Paragraph 19 has effect in relation to the issue of a revised code as it has effect in relation to the first issue of the code.

SCHEDULE 2

Section 3

URGENT TEMPORARY EXCLUSION ORDERS: REFERENCE TO THE COURT ETC

Application

- 1 This Schedule applies if the Secretary of State—
 - (a) makes the urgent case decisions in relation to an individual, and
 - (b) imposes a temporary exclusion order on the individual.

Statement of urgency

- 2 The temporary exclusion order must include a statement that the Secretary of State reasonably considers that the urgency of the case requires the order to be imposed without obtaining the permission of the court under section 3.

Reference to court

- 3 (1) Immediately after giving notice of the imposition of the temporary exclusion order, the Secretary of State must refer to the court the imposition of the order on the individual.
- (2) The function of the court on the reference is to consider whether the urgent case decisions were obviously flawed.
- (3) The court's consideration of the reference must begin within the period of 7 days beginning with the day on which notice of the imposition of the temporary exclusion order is given to the individual.

Status: This is the original version (as it was originally enacted).

- (4) The court may consider the reference—
- (a) in the absence of the individual,
 - (b) without the individual having been notified of the reference, and
 - (c) without the individual having been given an opportunity (if the individual was aware of the reference) of making any representations to the court.
- (5) But that does not limit the matters about which rules of court may be made.

Decision by court

- 4 (1) In a case where the court determines that any of the relevant decisions of the Secretary of State is obviously flawed, the court must quash the temporary exclusion order.
- (2) If sub-paragraph (1) does not apply, the court must confirm the temporary exclusion order.
- (3) If the court determines that the decision of the Secretary of State that the urgency condition is met is obviously flawed, the court must make a declaration of that determination (whether it quashes or confirms the temporary exclusion order under the preceding provisions of this paragraph).

Procedures on reference

- 5 (1) In determining a reference under paragraph 3, the court must apply the principles applicable on an application for judicial review.
- (2) The court must ensure that the individual is notified of the court's decision on a reference under paragraph 3.

Interpretation

- 6 (1) References in this Schedule to the urgency condition being met are references to condition E being met by virtue of section 2(7)(b) (urgency of the case requires a temporary exclusion order to be imposed without obtaining the permission of the court).
- (2) In this Schedule “the urgent case decisions” means the relevant decisions and the decision that the urgency condition is met.
- (3) In this Schedule “the relevant decisions” means the decisions that the following conditions are met—
- (a) condition A;
 - (b) condition B;
 - (c) condition C;
 - (d) condition D.

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);
- (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—

Status: This is the original version (as it was originally enacted).

- (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—
 - (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 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.

Status: This is the original version (as it was originally enacted).

- (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;
 - (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).

Status: This is the original version (as it was originally enacted).

- (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

- 10 (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.

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

Status: This is the original version (as it was originally enacted).

- (b) the application of sections 6 to 14 of the Justice and Security Act 2013 (closed material proceedings).

SCHEDULE 4

Section 12

TEMPORARY EXCLUSION ORDERS: APPEALS AGAINST CONVICTIONS

Right of appeal

- 1 (1) An individual who has been convicted of an offence under section 10(1) or (3) may appeal against the conviction if—
 - (a) a temporary exclusion order is quashed, and
 - (b) the individual could not have been convicted had the quashing occurred before the proceedings for the offence were brought.
- (2) An individual who has been convicted of an offence under section 10(3) may appeal against the conviction if—
 - (a) a notice under section 9, or a permitted obligation imposed by such a notice, is quashed, and
 - (b) the individual could not have been convicted had the quashing occurred before the proceedings for the offence were brought.

Court in which appeal to be made

- 2 An appeal under this Schedule is to be made—
 - (a) in the case of a conviction on indictment in England and Wales or Northern Ireland, to the Court of Appeal;
 - (b) in the case of a conviction on indictment or summary conviction in Scotland, to the High Court of Justiciary;
 - (c) in the case of a summary conviction in England and Wales, to the Crown Court; or
 - (d) in the case of a summary conviction in Northern Ireland, to the county court.

When the right of appeal arises

- 3 (1) The right of appeal under this Schedule does not arise until there is no further possibility of an appeal against—
 - (a) the decision to quash the temporary exclusion order, notice or permitted obligation (as the case may be), or
 - (b) any decision on an appeal made against that decision.
- (2) In determining whether there is no further possibility of an appeal against a decision of the kind mentioned in sub-paragraph (1), any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.

The appeal

- 4 (1) On an appeal under this Schedule to any court, that court must allow the appeal and quash the conviction.
- (2) An appeal under this Schedule to the Court of Appeal against a conviction on indictment—
- (a) may be brought irrespective of whether the appellant has previously appealed against the conviction;
 - (b) may not be brought after the end of the period of 28 days beginning with the day on which the right of appeal arises by virtue of paragraph 3; and
 - (c) is to be treated as an appeal under section 1 of the Criminal Appeal Act 1968 or, in Northern Ireland, under section 1 of the Criminal Appeal (Northern Ireland) Act 1980, but does not require leave in either case.
- (3) An appeal under this Schedule to the High Court of Justiciary against a conviction on indictment—
- (a) may be brought irrespective of whether the appellant has previously appealed against the conviction;
 - (b) may not be brought after the end of the period of 28 days beginning with the day on which the right of appeal arises by virtue of paragraph 3; and
 - (c) is to be treated as an appeal under section 106 of the Criminal Procedure (Scotland) Act 1995 for which leave has been granted.
- (4) An appeal under this Schedule to the High Court of Justiciary against a summary conviction—
- (a) may be brought irrespective of whether the appellant pleaded guilty;
 - (b) may be brought irrespective of whether the appellant has previously appealed against the conviction;
 - (c) may not be brought after the end of the period of two weeks beginning with the day on which the right of appeal arises by virtue of paragraph 3;
 - (d) is to be by note of appeal, which shall state the ground of appeal;
 - (e) is to be treated as an appeal for which leave has been granted under Part 10 of the Criminal Procedure (Scotland) Act 1995; and
 - (f) must be in accordance with such procedure as the High Court of Justiciary may, by Act of Adjournal, determine.
- (5) An appeal under this Schedule to the Crown Court or to the county court in Northern Ireland against a summary conviction—
- (a) may be brought irrespective of whether the appellant pleaded guilty;
 - (b) may be brought irrespective of whether the appellant has previously appealed against the conviction or made an application in respect of the conviction under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)) (case stated);
 - (c) may not be brought after the end of the period of 21 days beginning with the day on which the right of appeal arises by virtue of paragraph 3; and
 - (d) is to be treated as an appeal under section 108(1)(b) of that Act or, in Northern Ireland, under Article 140(1)(b) of that Order.

Status: This is the original version (as it was originally enacted).

SCHEDULE 5

Section 25

AVIATION, MARITIME AND RAIL SECURITY

PART 1

PASSENGER, CREW AND SERVICE INFORMATION

Amendments of the Immigration Act 1971

- 1 (1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended as follows.
- (2) In paragraph 27 (requirement to provide passenger lists etc), in sub-paragraph (5), after paragraph (b) insert—
- “(ba) may require a responsible person to be able to receive, in a specified form and manner, communications sent by the Secretary of State or an immigration officer relating to the information,”.
- (3) In paragraph 27B (passenger information or service information), after sub-paragraph (8) insert—
- “(8A) The officer may require a carrier to be able to receive communications from the officer in such form and manner as the Secretary of State may direct.”
- (4) After paragraph 27B insert—
- “27BA(1) The Secretary of State may make regulations requiring responsible persons in respect of ships or aircraft—
- (a) which have arrived, or are expected to arrive, in the United Kingdom, or
- (b) which have left, or are expected to leave, the United Kingdom, to supply information to the Secretary of State or an immigration officer.
- (2) The following information may be required under sub-paragraph (1)—
- (a) information about the persons on board;
- (b) information about the voyage or flight.
- (3) The regulations must—
- (a) specify or describe the classes of ships or aircraft to which they apply;
- (b) specify the information required to be supplied;
- (c) specify the time by which the information must be supplied;
- (d) specify the form and manner in which the information must be supplied.
- (4) The regulations may require responsible persons to be able to receive, in a specified form and manner, communications sent by the Secretary of State or an immigration officer relating to the information.
- (5) For the purposes of this paragraph, the following are responsible persons in respect of a ship or aircraft—

Status: This is the original version (as it was originally enacted).

- (a) the owner or agent, and
 - (b) the captain.
 - (6) Regulations under this paragraph may make different provision for different purposes, and in particular may make different provision for different types of carrier, journey or person on board.
 - (7) The power to make regulations under this paragraph is exercisable by statutory instrument; but no regulations under this paragraph are to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- 27BB (1) The Secretary of State may make regulations imposing penalties for failure to comply with—
- (a) an order under paragraph 27(2) (order requiring passenger list or particulars of member of crew),
 - (b) any request or requirement under paragraph 27B (passenger and service information), or
 - (c) regulations under paragraph 27BA (passenger, crew and service information).
- (2) Regulations under sub-paragraph (1) may in particular make provision—
- (a) about how a penalty is to be calculated;
 - (b) about the procedure for imposing a penalty;
 - (c) about the enforcement of penalties;
 - (d) allowing for an appeal against a decision to impose a penalty;
- and the regulations may make different provision for different purposes.
- (3) Provision in the regulations about the procedure for imposing a penalty must provide for a person to be given an opportunity to object to a proposed penalty in the circumstances set out in the regulations.
- (4) The regulations must provide that no penalty may be imposed on a person for failure to comply with an order under paragraph 27(2), a request or requirement under paragraph 27B or regulations under paragraph 27BA where—
- (a) proceedings have been instituted against the person under section 27 in respect of the same failure; or
 - (b) the failure consists of a failure to provide information that the person has also been required to provide under section 32 or 32A of the Immigration, Asylum and Nationality Act 2006 and—
 - (i) a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under section 32B of that Act, or
 - (ii) proceedings have been instituted against the person under section 34 of that Act in respect of a failure to provide that information; or
 - (c) the failure consists of a failure to provide information that the person has also been required to provide under an authority-to-carry scheme made under section 22 of the Counter-Terrorism and Security Act 2015 and a penalty has been imposed on the

Status: This is the original version (as it was originally enacted).

person in respect of a failure to provide that information by virtue of regulations made under section 24 of that Act.

- (5) Any penalty paid by virtue of this paragraph must be paid into the Consolidated Fund.
- (6) The power to make regulations under this paragraph is exercisable by statutory instrument; but no regulations under this paragraph are to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.”

- (5) Omit paragraph 27C (notification of non-EEA arrivals).
- 2 In section 27 of that Act (offences by persons connected with ships or aircraft or with ports)—
- (a) the existing provision becomes subsection (1);
- (b) at the end insert—
- “(2) Proceedings may not be instituted against a person under subsection (1)(a)(i) or (1)(b)(iv) for a failure to provide information or otherwise to comply with a requirement imposed under paragraph 27, 27B or 27BA of Schedule 2 where—
- (a) the person has paid a penalty in respect of the same failure, or a failure to provide the same information, by virtue of regulations made under—
- (i) paragraph 27BB of Schedule 2,
- (ii) section 32B of the Immigration, Asylum and Nationality Act 2006, or
- (iii) section 24 of the Counter-Terrorism and Security Act 2015 (penalty for breach of authority-to-carry scheme); or
- (b) proceedings have been instituted against the person under section 34 of the Immigration, Asylum and Nationality Act 2006 in respect of a failure to provide the same information.”

Amendments consequential upon paragraph 1

- 3 Omit section 19 of the Immigration and Asylum Act 1999.
- 4 In Schedule 7 to the Terrorism Act 2000 (port and border controls), in paragraph 17 (provision of passenger information), in sub-paragraph (6), for “or 27B” substitute “, 27B or 27BA”.

Amendments of the Immigration, Asylum and Nationality Act 2006

- 5 The Immigration, Asylum and Nationality Act 2006 is amended as set out in paragraphs 6 to 8.
- 6 In section 32 (passenger and crew information: police powers), at the end of subsection (6) insert—
- “(e) may include a requirement for the owner or agent of a ship or aircraft to be able to receive, in a specified form and manner, communications relating to the information.”

7 After that section insert—

“32A Regulations requiring information to be provided to police

- (1) The Secretary of State may make regulations requiring responsible persons in relation to ships or aircraft—
 - (a) which have arrived, or are expected to arrive, in the United Kingdom, or
 - (b) which have left, or are expected to leave, the United Kingdom, to provide information to the police.
- (2) The following information may be required under subsection (1)—
 - (a) information about the persons on board;
 - (b) information about the voyage or flight.
- (3) Regulations may impose a requirement to provide the information only if the Secretary of State thinks it necessary—
 - (a) in the case of a requirement to provide information to the police in England and Wales, for police purposes;
 - (b) in the case of a requirement to provide information to the police in Scotland, for police purposes which are or relate to reserved matters (within the meaning of the Scotland Act 1998);
 - (c) in the case of a requirement to provide information to the police in Northern Ireland, for police purposes which are or relate to excepted or reserved matters (within the meaning of the Northern Ireland Act 1998).

In this subsection “police purposes” has the same meaning as in section 32.
- (4) The regulations must—
 - (a) specify or describe the classes of ships or aircraft to which they apply;
 - (b) specify the information required to be provided;
 - (c) specify the time by which the information must be provided;
 - (d) specify the form and manner in which the information must be provided.
- (5) The regulations may require responsible persons to be able to receive, in a specified form and manner, communications sent by the police, the Secretary of State or an immigration officer relating to the information.
- (6) Regulations under this section—
 - (a) may apply generally or only to specified cases or circumstances,
 - (b) may make different provision for different cases or circumstances,
 - (c) shall be made by statutory instrument, and
 - (d) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (7) For the purposes of this section, the following are responsible persons in respect of a ship or aircraft—
 - (a) the owner or agent, and
 - (b) the captain.

Status: This is the original version (as it was originally enacted).

32B Penalty for breach of section 32 or 32A

- (1) The Secretary of State may make regulations imposing penalties for failure to comply with a requirement imposed—
 - (a) under section 32(2) (provision of passenger, crew or service information), or
 - (b) by regulations made under section 32A (regulations requiring information to be provided to police).
- (2) Regulations under subsection (1) may in particular make provision—
 - (a) about how a penalty is to be calculated;
 - (b) about the procedure for imposing a penalty;
 - (c) about the enforcement of penalties;
 - (d) allowing for an appeal against a decision to impose a penalty;
 and the regulations may make different provision for different purposes.
- (3) Provision in the regulations about the procedure for imposing a penalty must provide for a person to be given an opportunity to object to a proposed penalty in the circumstances set out in the regulations.
- (4) The regulations must provide that no penalty may be imposed on a person for failure to comply with a requirement imposed under section 32(2) or by regulations made under section 32A where—
 - (a) proceedings have been instituted against the person under section 34 in respect of the same failure, or
 - (b) the failure consists of a failure to provide information that the person has also been required to provide under paragraph 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971 and—
 - (i) a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under paragraph 27BB of that Schedule, or
 - (ii) proceedings have been instituted against the person under section 27 of that Act in respect of a failure to provide that information, or
 - (c) the failure consists of a failure to provide information that the person has also been required to provide under an authority-to-carry scheme made under section 22 of the Counter-Terrorism and Security Act 2015 and a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under section 24 of that Act.
- (5) Any penalty paid by virtue of this section must be paid into the Consolidated Fund.
- (6) Regulations under this section—
 - (a) must be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”

- 8 (1) Section 34 (offence of failure to provide passenger information etc) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (1), for “imposed under section 32(2) or (3) or 33(2)” substitute “imposed—
- (a) under section 32(2) or (3) or 33(2), or
 - (b) by regulations made under section 32A”.
- (3) After subsection (1) insert—
- “(1A) Proceedings may not be instituted against a person under subsection (1) for a failure to comply with a requirement imposed under section 32(2) or by regulations made under section 32A where—
- (a) the person has paid a penalty in respect of the same failure, or a failure to provide the same information, by virtue of regulations made under—
 - (i) section 32B,
 - (ii) paragraph 27BB of Schedule 2 to the Immigration Act 1971, or
 - (iii) section 24 of the Counter-Terrorism and Security Act 2015 (penalty for breach of authority-to-carry scheme); or
 - (b) proceedings have been instituted against the person under section 27 of the Immigration Act 1971 in respect of a failure to provide the same information.”
- (4) In subsection (2), at the end insert “, and
- (c) where a person fails without reasonable excuse to comply with a requirement imposed by regulations made under section 32A to provide information to the police in England and Wales—
 - (i) if the required information does not relate to a reserved matter (within the meaning of the Scotland Act 1998), the person shall not be treated as having committed the offence in Scotland (but has committed the offence in England and Wales);
 - (ii) if the required information does not relate to an excepted or reserved matter (within the meaning of the Northern Ireland Act 1998), the person shall not be treated as having committed the offence in Northern Ireland (but has committed the offence in England and Wales).”

PART 2

DIRECTIONS ETC RELATING TO AVIATION, SHIPPING AND RAIL

Amendments of the Aviation Security Act 1982: information and directions

- 9 (1) The Aviation Security Act 1982 is amended as follows.
- (2) In section 11 (power to require information)—
- (a) in subsection (2), for the words from “a date” to “before” substitute “a period before the end of”;
 - (b) in subsection (4) omit “(not being less than seven days from the date on which the change of circumstances occurs)”.

Status: This is the original version (as it was originally enacted).

- (3) In section 12 (power to impose restrictions in relation to aircraft), in subsection (1) (b), for “fly unless such searches of the aircraft” substitute “fly in or into the United Kingdom unless such searches (of persons or property or of the aircraft itself)”.
- (4) In section 16 (limitations on scope of directions under sections 12 to 14), in subsection (5), for paragraph (a) (including the word “and” at the end) substitute—
- “(a) it shall have effect only in relation to—
- (i) aircraft registered in the United Kingdom, or
- (ii) a requirement not to cause or permit an aircraft to fly in or into the United Kingdom unless certain things have, or have not, been done, and”.
- (5) In section 24 (service of documents)—
- (a) at the end of subsection (2) insert “, or
- (f) in the case of a person who is required by regulations to be able to accept service electronically in a manner and form specified in the regulations, in that manner and form.”;
- (b) after subsection (9) insert—
- “(10) Regulations under this section—
- (a) may make different provision for different cases,
- (b) may include incidental, supplemental or transitional provision,
- (c) shall be made by the Secretary of State by statutory instrument, and
- (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (6) In section 38(1) (interpretation), in paragraph (b) of the definition of “aircraft registered or operating in the United Kingdom”, for the words from “flights” to “aerodromes” substitute “a flight any part of which is”.
- 10 In consequence of the amendments made by paragraph 9(2), in Schedule 1 to the Aviation and Maritime Security Act 1990 (amendments of the Aviation Security Act 1982) omit paragraph 2(3) and (5).

Amendments of the Aviation Security Act 1982: civil penalties for breach of directions

- 11 (1) Part 2 of the Aviation Security Act 1982 (protection of aircraft etc against acts of violence) is amended as follows.
- (2) After section 22 insert—

“22A Civil penalties for failure to provide information or comply with a direction

- (1) The Secretary of State may make regulations imposing penalties for—
- (a) failure to comply with a requirement imposed by a notice under section 11 (notice requiring information);
- (b) making a false statement in furnishing information required by a notice under that section;
- (c) failure to comply with a direction under any of sections 12 to 14.

Status: This is the original version (as it was originally enacted).

- (2) Regulations under subsection (1) may in particular make provision—
 - (a) about how a penalty is to be calculated;
 - (b) about the procedure for imposing a penalty;
 - (c) about the enforcement of penalties;
 - (d) allowing for an appeal against a decision to impose a penalty;and the regulations may make different provision for different purposes.
 - (3) Provision in the regulations about the procedure for imposing a penalty must provide for a person to be given an opportunity to object to a proposed penalty in the circumstances set out in the regulations.
 - (4) The regulations must provide that no penalty may be imposed on a person for failure to comply with the requirements of a notice under section 11, or for making a false statement in furnishing information required by such a notice, where proceedings have been instituted against the person for an offence under section 11(5) in respect of the same failure or false statement.
 - (5) The regulations must provide that no penalty may be imposed on a person for failure to comply with a direction under any of sections 12 to 14 where proceedings have been instituted against the person for an offence under any of those sections in respect of the same failure.
 - (6) Any penalty paid by virtue of this section must be paid into the Consolidated Fund.
 - (7) Regulations under this section are to be made by statutory instrument; and any such statutory instrument may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.”
- (3) In section 11 (power to require information), after subsection (5) insert—
- “(5A) Proceedings for an offence under subsection (5) above may not be instituted against a person who has paid a penalty in respect of the same failure, or the same false statement, by virtue of regulations made under section 22A.”
- (4) In section 12 (power to impose restrictions in relation to aircraft), after subsection (9) insert—
- “(9A) Proceedings for an offence under subsection (9) above may not be instituted against a person who has paid a penalty in respect of the same failure by virtue of regulations made under section 22A.”
- (5) In section 13 (power to require aerodrome managers to promote searches at aerodromes), after subsection (4) insert—
- “(4ZA) Proceedings for an offence under subsection (4) above may not be instituted against a person who has paid a penalty in respect of the same failure by virtue of regulations made under section 22A.”
- (6) In section 13A (power to require other persons to promote searches), after subsection (3) insert—
- “(3A) Proceedings for an offence under subsection (3) above may not be instituted against a person who has paid a penalty in respect of the same failure by virtue of regulations made under section 22A.”

Status: This is the original version (as it was originally enacted).

(7) In section 14 (general power to direct measures for purposes of protecting aircraft etc against acts of violence), after subsection (7) insert—

“(7ZA) Proceedings for an offence under subsection (7)(a) above may not be instituted against a person who has paid a penalty in respect of the same failure by virtue of regulations made under section 22A.”

Amendments of the Aviation and Maritime Security Act 1990: information and directions

12 (1) Part 3 of the Aviation and Maritime Security Act 1990 (protection of ships and harbour areas against acts of violence) is amended as follows.

(2) In section 19 (power of Secretary of State to require information)—

- (a) in subsection (2), for the words from “a date” to “before” substitute “a period before the end of”;
- (b) in subsection (4), omit “(not being less than seven days from the date on which the change of circumstances occurs)”.

(3) In section 21 (power to impose restrictions in relation to ships), in subsection (1)—

- (a) in the opening words, after “is in” insert “, or appears to the Secretary of State to be likely to enter.”;
- (b) in paragraph (b), for “go to sea unless such searches of the ship” substitute “enter or (as the case may be) to leave a harbour area unless such searches (of persons or property or of the ship itself)”.

(4) In section 26 (limitations on scope of directions under sections 21 to 24), in subsection (5), for paragraph (a) (including the word “and” at the end) substitute—

- “(a) it shall have effect only in relation to—
- (i) British ships, or
 - (ii) a requirement not to cause or permit a ship to enter a harbour area unless certain things have, or have not, been done, and”.

(5) In section 45 (service of documents)—

- (a) at the end of subsection (2) insert “, or
- (f) in the case of a person who is required by regulations to be able to accept service electronically in a manner and form specified in the regulations, in that manner and form.”;

(b) after subsection (9) insert—

- “(9A) Regulations under subsection (2)(f)—
- (a) may make different provision for different cases,
 - (b) may include incidental, supplemental or transitional provision,
 - (c) shall be made by the Secretary of State by statutory instrument, and
 - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Amendments of the Channel Tunnel (Security) Order 1994: information and directions

- 13 (1) Part 3 of the Channel Tunnel (Security) Order 1994 ([S.I. 1994/570](#)) (protection of Channel Tunnel trains and the tunnel system against acts of violence) is amended as follows.
- (2) In article 11 (powers of Secretary of State to require information)—
- (a) in paragraph (2), for the words from “a date” to “before” substitute “a period before the end of”;
- (b) in paragraph (4) omit “(not being less than seven days from the date on which the change of circumstances occurs)”.
- (3) In article 13 (power to impose restrictions in relation to Channel Tunnel trains), in paragraph (1)(b), for “unless such searches of the train” substitute “in or into the United Kingdom unless such searches (of persons or property or of the train itself)”.
- (4) In article 36 (service of documents)—
- (a) at the end of paragraph (2) insert “, or
- (f) in the case of a person who is required by regulations to be able to accept service electronically in a manner and form specified in the regulations, in that manner and form.”;
- (b) after paragraph (8) insert—
- “(9) Regulations under paragraph (2)(f)—
- (a) may make different provision for different cases,
- (b) may include incidental, supplemental or transitional provision,
- (c) shall be made by the Secretary of State by statutory instrument, and
- (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 14 The amendments made by paragraph 13 do not affect the power to make further subordinate legislation amending or revoking the amended provisions.

SCHEDULE 6

Section 26

SPECIFIED AUTHORITIES

Local government

A county council or district council in England.

The Greater London Authority.

A London borough council.

The Common Council of the City of London in its capacity as a local authority.

The Council of the Isles of Scilly.

A county council or county borough council in Wales.

A person carrying out a function of an authority mentioned in section 1(2) of the Local Government Act 1999 by virtue of a direction made under section 15 of that Act.

Criminal justice

The governor of a prison in England and Wales (or, in the case of a contracted out prison, its director).

Status: This is the original version (as it was originally enacted).

The governor of a young offender institution or secure training centre (or, in the case of a contracted out young offender institution or secure training centre, its director).

The principal of a secure college.

A provider of probation services within the meaning given by section 3(6) of the Offender Management Act 2007.

Education, child care etc

A person who is authorised by virtue of an order made under section 70 of the Deregulation and Contracting Out Act 1994 to exercise a function specified in Schedule 36A to the Education Act 1996.

A person with whom arrangements have been made for the provision of education under section 19 of the Education Act 1996 or section 100 of the Education and Inspections Act 2006 (cases of illness, exclusion etc).

The proprietor of—

- (a) a school that has been approved under section 342 of the Education Act 1996,
- (b) a maintained school within the meaning given by section 20(7) of the School Standards and Framework Act 1998,
- (c) a maintained nursery school within the meaning given by section 22(9) of that Act,
- (d) an independent school registered under section 158 of the Education Act 2002,
- (e) an independent educational institution registered under section 95(1) of the Education and Skills Act 2008, or
- (f) an alternative provision Academy within the meaning given by section 1C of the Academies Act 2010.

A person who is specified or nominated in a direction made in relation to the exercise of a local authority's functions given by the Secretary of State under section 497A of the Education Act 1996 (including that section as applied by section 50 of the Children Act 2004 or section 15 of the Childcare Act 2006).

A person entered on a register kept by Her Majesty's Chief Inspector of Education, Children's Services and Skills under Part 2 of the Care Standards Act 2000.

The governing body of a qualifying institution within the meaning given by section 11 of the Higher Education Act 2004.

The provider of education or training—

- (a) to which Chapter 3 of Part 8 of the Education and Inspections Act 2006 applies, and
- (b) in respect of which funding is provided by, or under arrangements made by, the Secretary of State or the Chief Executive of Skills Funding.

A person registered under Chapter 2, 2A, 3 or 3A of Part 3 of the Childcare Act 2006 or under section 20 of the Children and Families (Wales) Measure 2010 ([nawm 1](#)).

A body corporate with which a local authority has entered into arrangements under Part 1 of the Children and Young Persons Act 2008.

A person who is specified in a direction made in relation to the exercise of a local authority's functions given by the Welsh Ministers under section 25 of the [School Standards and Organisation \(Wales\) Act 2013 \(anaw 1\)](#) (including that section as applied by section 50A of the Children Act 2004 or section 29 of the Childcare Act 2006).

The governing body of an educational establishment maintained by a local authority in Wales.

The governing body or proprietor of an institution (not otherwise listed) at which more than 250 students, excluding students undertaking distance learning courses, are undertaking—

- (a) courses in preparation for examinations related to qualifications regulated by the Office of Qualifications and Examinations Regulation or the Welsh Government;

Status: This is the original version (as it was originally enacted).

(b) courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).

Health and social care

An NHS Trust established under section 25 of the National Health Service Act 2006 or under section 18 of the National Health Service (Wales) Act 2006.

An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006.

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

A Community Health Council in Wales.

The Board of Community Health Councils in Wales or Bwrdd Cyngorau Iechyd Cymuned Cymru.

Police

A chief officer of police for a police area in England and Wales.

The British Transport Police Force.

A Port Police Force established under an order made under section 14 of the Harbours Act 1964.

The Port Police Force established under Part 10 of the Port of London Act 1968.

A Port Police Force established under section 79 of the Harbours, Docks and Piers Clauses Act 1847.

The Common Council of the City of London in its capacity as a police authority.

A police and crime commissioner established under section 1 of the Police Reform and Social Responsibility Act 2011.

The Mayor's Office for Policing and Crime established under section 3 of that Act.

The Civil Nuclear Police Authority.

SCHEDULE 7

Section 38

PARTNERS OF LOCAL PANELS

Ministers of the Crown and government departments

A Minister of the Crown.

A government department other than an intelligence service.

Local government

A local authority (other than a local authority that is a member of the panel in question).

A person carrying out a function of a local authority by virtue of a direction made under section 15 of the Local Government Act 1999.

Criminal justice

The governor of a prison in England and Wales (or, in the case of a contracted out prison, its director).

The governor of a young offender institution or secure training centre (or, in the case of a contracted out young offender institution or secure training centre, its director).

The principal of a secure college.

A youth offending team established under section 39 of the Crime and Disorder Act 1998.

A provider of probation services within the meaning given by section 3(6) of the Offender Management Act 2007.

Status: This is the original version (as it was originally enacted).

Education, child care etc

A sixth form college corporation within the meaning given by section 90(1) of the Further and Higher Education Act 1992.

The governing body of an institution within the further education sector within the meaning given by section 91(3) of that Act.

A person who is authorised by virtue of an order made under section 70 of the Deregulation and Contracting Out Act 1994 to exercise a function specified in Schedule 36A to the Education Act 1996.

A person with whom arrangements have been made for the provision of education under section 19 of the Education Act 1996 or section 100 of the Education and Inspections Act 2006 (cases of illness, exclusion etc).

The proprietor of—

- (a) a school that has been approved under section 342 of the Education Act 1996,
- (b) a maintained school within the meaning given by section 20(7) of the School Standards and Framework Act 1998,
- (c) a maintained nursery school within the meaning given by section 22(9) of that Act,
- (d) an independent school registered under section 158 of the Education Act 2002,
- (e) an independent educational institution registered under section 95(1) of the Education and Skills Act 2008,
- (f) a 16 to 19 Academy within the meaning given by section 1B of the Academies Act 2010,
- (g) an alternative provision Academy within the meaning given by section 1C of that Act, or
- (h) a special post-16 institution within the meaning given by section 83(2) of the Children and Families Act 2014.

A person who is specified or nominated in a direction made in relation to the exercise of a local authority's functions given by the Secretary of State under section 497A of the Education Act 1996 (including that section as applied by section 50 of the Children Act 2004 or section 15 of the Childcare Act 2006).

A person registered under Part 2 of the Care Standards Act 2000 in respect of—

- (a) a children's home as defined in section 1 of that Act,
- (b) a residential family centre as defined in section 4 of that Act,
- (c) a fostering agency as defined in that section, or
- (d) a holiday scheme for disabled children, within the meaning of the Registered Holiday Schemes for Disabled Children (England) Regulations 2013 ([S.I. 2013/1394](#)).

The governing body of a qualifying institution within the meaning given by section 11 of the Higher Education Act 2004.

A person registered under Chapter 2, 2A, 3 or 3A of Part 3 of the Childcare Act 2006 or under section 20 of the Children and Families (Wales) Measure [2010 \(nawm 1\)](#).

A body corporate with which a local authority has entered into arrangements under Part 1 of the Children and Young Persons Act 2008.

A person who is specified in a direction made in relation to the exercise of a local authority's functions given by the Welsh Ministers under section 25 of the [School Standards and Organisation \(Wales\) Act 2013 \(anaw 1\)](#) (including that section as applied by section 50A of the Children Act 2004 or section 29 of the Childcare Act 2006).

The governing body of an educational establishment maintained by a local authority in Wales.

Status: This is the original version (as it was originally enacted).

The governing body or proprietor of an institution (not otherwise listed) at which more than 250 students, excluding students undertaking distance learning courses, are undertaking—

- (a) courses in preparation for examinations related to qualifications regulated by the Office of Qualifications and Examinations Regulation or the Welsh Government;
- (b) courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).

Health and social care

A clinical commissioning group established under section 14D of the National Health Service Act 2006.

An NHS Trust established under section 25 of the National Health Service Act 2006.

An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006.

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

An NHS trust established under section 18 of the National Health Service (Wales) Act 2006.

Police

A chief officer of police for a police area in England and Wales (other than a chief officer who is a member of the panel in question).

SCHEDULE 8

Section 43

PORT AND BORDER CONTROLS: POWER TO EXAMINE GOODS

Terrorism Act 2000 (c. 11)

- 1 (1) In Schedule 7 to the Terrorism Act 2000 (port and border controls) paragraph 9 (power to examine goods) is amended as follows.
- (2) After sub-paragraph (2) insert—
- “(2A) The reference in sub-paragraph (2)(a) to goods which are about to leave Great Britain or Northern Ireland on a ship includes goods which—
- (a) are held at premises operated by a sea cargo agent, and
 - (b) are to be delivered to a place in Great Britain or Northern Ireland for carriage on a ship.
- (2B) The reference in sub-paragraph (2)(b) to goods which are about to leave any place in Great Britain or Northern Ireland on an aircraft includes goods which—
- (a) are held at premises operated by an air cargo agent, and
 - (b) are to be delivered to a place in Great Britain or Northern Ireland for carriage on an aircraft.
- (2C) An examination under this paragraph may be carried out only—
- (a) at a port;
 - (b) at premises operated by a sea cargo agent or an air cargo agent;
 - (c) at a transit shed;

Status: This is the original version (as it was originally enacted).

(d) at a location designated by the Secretary of State under sub-paragraph (2D) (a “designated examination location”).

(2D) The Secretary of State may designate a location for the purposes of sub-paragraph (2C)(d) only if the Secretary of State reasonably believes that it is necessary to designate that location in order for examining officers to be able to exercise their functions under this paragraph.

(2E) The Secretary of State must maintain and publish a list of designated examination locations.”

(3) For sub-paragraph (3) substitute—

“(3) In this paragraph—

- (a) “air cargo agent” has the meaning given by section 21F(1) of the Aviation Security Act 1982;
- (b) “goods” includes property of any description, and containers;
- (c) “sea cargo agent” has the meaning given by section 41(1) of the Aviation and Maritime Security Act 1990;
- (d) “transit shed” has the meaning given by section 25A of the Customs and Excise Management Act 1979.”

(4) For sub-paragraph (4) substitute—

“(4) For the purposes of determining whether to carry out an examination under this paragraph an examining officer may—

- (a) board a ship or aircraft;
- (b) enter a vehicle;
- (c) enter premises operated by a sea cargo agent or an air cargo agent;
- (d) enter a transit shed;
- (e) enter a designated examination location.”

Regulation of Investigatory Powers Act 2000 (c. 23)

2 In section 3 of the Regulation of Investigatory Powers Act 2000 (lawful interception without an interception warrant), after subsection (3A) insert—

“(3B) Conduct consisting in the interception of a communication in the course of its transmission by means of a public postal service is authorised by this section if it is conduct under paragraph 9 of Schedule 7 to the Terrorism Act 2000 (port and border controls).”

Postal Services Act 2000 (c. 26)

3 (1) In section 104 of the Postal Services Act 2000 (inviolability of mails) subsection (3) is amended as follows.

(2) Omit the word “or” at the end of paragraph (c).

(3) At the end insert “, or

- (e) a power conferred by paragraph 9 of Schedule 7 to the Terrorism Act 2000 (port and border controls).”