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STATUTORY INSTRUMENTS

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**1996 No. 892**

**PREVENTION AND  
SUPPRESSION OF TERRORISM**

**The Prevention of Terrorism  
(Exclusion Orders) Regulations 1996**

*Made* - - - - 20th March 1996  
*Coming into force* - - 25th March 1996

Whereas the Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the making of exclusion orders under the Prevention of Terrorism (Temporary Provisions) Act 1989<sup>(3)</sup>;

And whereas a draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to paragraph 2(2) of Schedule 2 to the European Communities Act 1972;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by section 2(2) of that Act hereby makes the following Regulations:

**Citation, commencement etc.**

1.—(1) These Regulations may be cited as the Prevention of Terrorism (Exclusion Orders) Regulations 1996 and shall come into force on 25th March 1996.

(2) For the purposes of section 27 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (duration), the amendments made in that Act by these Regulations shall be treated, as from the time when these Regulations come into force, as having been continued in force by the order under subsection (6) of that section which has effect at that time.

**Making of exclusion orders**

2. For paragraphs 2 to 5 of Schedule 2 to the Prevention of Terrorism (Temporary Provisions) Act 1989 (making of exclusion orders) substitute—

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(1) The European Communities (Designation) Order 1996 (S.I. 1996/266).  
(2) 1972 c. 68.  
(3) 1989 c. 4.

“Notice that exclusion order is being considered

2.—(1) Where the Secretary of State is considering whether to make an exclusion order against a person—

- (a) if the person is in the United Kingdom, notice in writing shall be served on him that the Secretary of State is considering that question; and
- (b) if the person is not in the United Kingdom, notice in writing may be served on him that the Secretary of State is considering that question.

(2) A notice under sub-paragraph (1) above shall—

- (a) specify whether the order under consideration is an order under section 5, 6 or 7 of this Act; and
- (b) set out the rights afforded by paragraph 4 below and specify the manner in which those rights are to be exercised.

(3) Where a person on whom notice is served under sub-paragraph (1) above is not for the time being detained by virtue of this Act, the notice may be served on him by posting it to him at his last known address.

Advice

3. Where notice is served on a person under paragraph 2(1) above, the matter shall be referred for the advice of one or more persons nominated by the Secretary of State.

Representations and interview

4.—(1) Where a person on whom notice is served under paragraph 2(1) above objects to the making against him of the exclusion order under consideration, he may—

- (a) make representations in writing to the Secretary of State setting out the grounds of his objections; and
- (b) include in those representations a request for a personal interview with the person or persons nominated by the Secretary of State under paragraph 3 above.

(2) The person on whom the notice is served may exercise the rights conferred by sub-paragraph (1) above—

- (a) if he is outside the relevant territory when the notice is served, within fourteen days of the service of the notice;
- (b) if he is inside the relevant territory when the notice is served but departs with the Secretary of State’s approval within seven days of the service of the notice, within fourteen days of his departure; and
- (c) in any other case, within seven days of the service of the notice.

(3) In sub-paragraph (2) above “the relevant territory” means—

- (a) Great Britain if the notice relates to the making of an order under section 5 of this Act;
- (b) Northern Ireland if it relates to the making of an order under section 6 of this Act; and
- (c) the United Kingdom if it relates to the making of an order under section 7 of this Act.

(4) A person who requests a personal interview under sub-paragraph (1)(b) above shall be granted one unless—

- (a) sub-paragraph (2)(a) or (b) above applies to him; and

- (b) it appears to the Secretary of State that it is not reasonably practicable to grant him such an interview in an appropriate country or territory within a reasonable period from the date on which he made his representations.
- (5) Where, in the case of a person to whom sub-paragraph (2)(a) or (b) above applies, it appears to the Secretary of State that it is reasonably practicable to grant him a personal interview in more than one appropriate country or territory, the Secretary of State may grant him the personal interview in whichever of them he thinks fit.
- (6) In sub-paragraphs (4) and (5) above “appropriate country or territory” means—
  - (a) Northern Ireland or the Republic of Ireland if the notice served on the person under paragraph 2(1) above relates to the making of an order under section 5 of this Act;
  - (b) Great Britain or the Republic of Ireland if it relates to the making of an order under section 6 of this Act; and
  - (c) the Republic of Ireland if it relates to the making of an order under section 7 of this Act.
- (7) It is for the Secretary of State to determine the place in any country or territory at which a personal interview is to be granted under this paragraph.

#### Making of exclusion order

- 5.—**(1) In deciding whether to make an exclusion order against any person, the Secretary of State shall take into account everything which appears to him to be relevant; and where a notice has been served on the person concerned under paragraph 2(1) above the Secretary of State shall in particular take account of—
- (a) the advice of the person or persons to whom the matter was referred under paragraph 3 above;
  - (b) any representations made by the person under paragraph 4 above; and
  - (c) the report of any personal interview granted under that paragraph.
- (2) The question whether to make an exclusion order against a person on whom notice has been served under paragraph 2(1) above shall be decided as soon as is reasonably practicable after—
- (a) the Secretary of State has received the advice of the person or persons to whom the matter was referred under paragraph 3 above; and
  - (b) sub-paragraph (3) below is satisfied.
- (3) This sub-paragraph is satisfied if—
- (a) the Secretary of State has received representations made by the person under paragraph 4 above and the report of any personal interview granted under that paragraph;
  - (b) the Secretary of State has received from the person a statement in writing that he does not intend to make representations under that paragraph; or
  - (c) the period during which the person may make representations under that paragraph has expired.
- (4) If the Secretary of State—
- (a) makes an exclusion order against a person; or
  - (b) decides not to make an exclusion order against a person on whom notice has been served under paragraph 2(1) above,

notice in writing of the making of the order or the decision not to make an order shall be served on him if it is reasonably practicable to do so.

Detention pending decision whether to make exclusion order

**5A.—**(1) A person on whom notice has been served under paragraph 2(1) above may be detained under the authority of the Secretary of State until the Secretary of State has either made an exclusion order against him or decided not to make an exclusion order against him.

(2) A person liable to be detained under sub-paragraph (1) above may be arrested without warrant by an examining officer.

(3) The power of detention and the power of arrest conferred by sub-paragraphs (1) and (2) above are exercisable only—

(a) in Great Britain if the notice relates to the making of an order under section 5 of this Act; and

(b) in Northern Ireland if it relates to the making of an order under section 6 of this Act.

(4) A person may be removed from a vehicle for detention under this paragraph.”.

### **Consequential amendments**

**3.—**(1) The Prevention of Terrorism (Temporary Provisions) Act 1989 shall be further amended as follows.

(2) In Schedule 2—

(a) in paragraph 1, after sub-paragraph (3) insert—

“(4) The fact that the Secretary of State has decided at any time not to make an exclusion order against a person on whom a notice has been served under paragraph 2(1) below shall not prevent the Secretary of State from making an exclusion order against him after a further notice has been served on him under that provision.”;

(b) in paragraph 6(1) omit “and one of the conditions in paragraph 5(a), (b) and (c) above is fulfilled”;

(c) in paragraph 7(7), before “relevant” insert “the”; and

(d) in paragraph 8(1), after “paragraph” insert “5A(2) or”.

(3) In Schedule 3, in paragraph 3(4)(b) omit “to make an exclusion order against him or”.

(4) In Schedule 5—

(a) in paragraph 2(1)(b), after “order” insert “or has been served with a notice under paragraph 2(1) of Schedule 2 to this Act”; and

(b) omit paragraph 6(1)(b).

Home Office  
20th March 1996

*Michael Howard*  
One of Her Majesty’s Principal Secretaries of  
State

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Prevention of Terrorism (Temporary Provisions) Act 1989 (“the 1989 Act”) to take account of the judgment of the European Court of Justice in *R v Secretary of State for the Home Department, ex parte Gallagher* (30th November 1995) which interpreted Article 9.1 of Council Directive [64/221/EEC](#) (OJNo. 056, 4.4.64, p.850, OJ/SE 1963-64 p.117) as prohibiting an administrative authority (except in cases of urgency) from taking a decision ordering expulsion before a competent authority has given its opinion.

The Regulations amend Schedule 2 to the 1989 Act by requiring certain procedures to be followed where the Secretary of State is considering whether to make an exclusion order against a person under section 5, 6 or 7 of the 1989 Act. These procedures replace similar procedures which were previously contained in Schedule 2 but which applied only after an exclusion order had been made.

Under the new procedures, the Secretary of State must serve written notice on any person in the United Kingdom against whom he is considering making an exclusion order. He must also refer the matter for the advice of one or more persons nominated for that purpose. A person who has been served with such a notice may make written representations setting out his objections and may request a personal interview with the person or persons nominated by the Secretary of State.

In deciding whether to make an exclusion order, the Secretary of State must take account of the advice, any representations and the report of any interview. If it is reasonably practicable to do so, he must then give to the person in question written notice of whether or not an exclusion order has been made.

A person on whom notice has been served that the Secretary of State is considering making an exclusion order may be detained by the Secretary of State pending completion of the new procedures unless the Secretary of State has given approval for his departure from the territory in respect of which an exclusion order is being considered.