

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Financial Restrictions Proceedings

CHAPTER 1 – Application to set aside financial restrictions decision

Section 63 – Application to set aside financial restrictions decision

187. *Subsection (1)* applies this section to any decision of the Treasury in the exercise of their functions under:
- a) the UN Terrorism Orders (defined below),
 - b) Part 2 of the Anti-Terrorism, Crime and Security Act 2001, or
 - c) Schedule 7 to this Act.
188. *Subsection (2)* creates a statutory power for a person affected by such a decision to apply to have it set aside.
189. *Subsection (3)* provides that the court shall apply judicial review principles to any such application. *Subsections (4)* and *(5)* set the scope of the court’s power to grant relief if it concludes that a decision should be set aside.
190. *Subsections (6)* and *(7)* apply the section to any application made after the commencement of the section including where the decision of the Treasury to which the application relates was taken before commencement.

Section 64 – UN terrorism orders

191. *Subsection (1)* contains the list of the UN terrorism orders; *subsection (2)* includes a power for the Treasury, by order, to make changes to the list and *subsection (3)* provides that such an order be subject to a negative resolution procedure.

CHAPTER 2 – Financial restrictions proceedings

Introductory

Section 65 – Financial restrictions proceedings

192. *Section 67* defines “financial restrictions proceedings” for the purpose of Chapter 2 of Part 6 as proceedings on an application under section 63 or on a claim arising from any matter to which such an application relates.

Rules of court, disclosure and related matters

Section 66 – General provision about rules of court

193. **Section 66** contains general provisions about the rules of court for financial restrictions proceedings. In particular, *subsection (2)* requires the maker of the rules of court to have regard to both the need for a proper review of the decision subject to challenge, and the need to ensure that disclosures are not made where this would be contrary to the public interest. *Subsections (3) and (4)* contain a non-exhaustive list of matters which the rules of court may cover. This includes provision concerning:
- a) mode of proof and evidence;
 - b) proceedings being determined without a hearing;
 - c) legal representation;
 - d) the extent to which full particulars of reasons for decisions must be given;
 - e) proceedings in the absence of parties and their legal representatives;
 - f) the function of a special advocate; and
 - g) summaries of evidence taken in a party's absence.

Section 67 – Rules of court about disclosure

194. **Section 67** requires rules of court to contain certain provisions relating to disclosure, including rules relating to applications by the Treasury to withhold material from disclosure. *Subsection (3)* provides that the Treasury must be given an opportunity to apply for permission not to disclose sensitive material (and the application must be heard in private) and provides that the court must be required to give permission for material not to be disclosed if it considers that the disclosure would be contrary to the public interest. Where the court gives permission for material not to be disclosed, it must consider requiring the Treasury to provide a summary of the material, although such a summary must not itself contain material the disclosure of which would be contrary to the public interest.
195. If, having applied, the Treasury do not receive the court's permission to withhold sensitive material, but elect not to disclose it anyway, rules of court must authorise the court to direct either that the Treasury may not rely on the material or, if it adversely affects their case, to make such concessions as the court specifies (*subsection (5)*).
196. *Subsection (6)* confirms that nothing in section 67, or in rules of court made under section 67, is to be read as requiring the court to act in a manner inconsistent with Article 6 of the European Convention on Human Rights. This provision is included to ensure that this Part, and rules of court made under it, comply with the European Convention on Human Rights, following the House of Lords decision in *Secretary of State for the Home Department v MB* ([2007] UKHL 46).

Section 68 – Appointment of special advocate

197. **Section 68** provides for the appointment of a special advocate in financial restrictions proceedings. This procedure corresponds with the special representation procedure contained in the Prevention of Terrorism Act 2005 (see paragraph 7 of the Schedule to the Act). A special advocate is a qualified lawyer who has passed through the Government's security vetting process, whose role is to represent the interests of a party to financial restrictions proceedings (including any appeal) in circumstances where that party and his own legal representative are excluded from the proceedings. The special advocate is appointed by the appropriate law officer (as described in *subsection (3)*) and is not responsible to the party whose interests he is appointed to represent.

Section 69 – Intercept evidence

198. **Section 69** amends section 18 of the **Regulation of Investigatory Powers Act 2000 (c.23)** ("RIPA"), to enable the disclosure of intercepted communications in financial restrictions proceedings. Section 17 of RIPA contains a general prohibition on the use of intercepted communications in legal proceedings. Section 18 of RIPA lists certain exceptions to that general prohibition and this section adds financial restrictions proceedings to that list of exceptions.

Section 70 – Qualification of duty to give reasons

199. **Section 70** qualifies the Treasury's disclosure obligations under paragraph 11, Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001 ("ATCSA"). The Treasury shall not be required to disclose under paragraph 11 of Schedule 3 to the ATCSA any information which it would not be required to disclose under Part 6.

Supplementary

Section 71 – Allocation of Proceedings to Queen's Bench Division

200. **Section 71** provides that financial restrictions proceedings are to be allocated to the Queen's Bench Division.

Section 72 – Initial exercise of powers by Lord Chancellor

201. **Section 72** allows the Lord Chancellor, the first time the power is used, to exercise the power conferred by sections 66 and 67 to make rules of court. The Lord Chancellor must consult the Lord Chief Justice (or, where appropriate, the Lord Chief Justice of Northern Ireland), before making such rules, but this requirement may be satisfied by any consultation that takes place before commencement (see *subsection (3)*). The rules will come into effect only if approved by the House of Commons and the House of Lords within 40 days of being made (*subsection (4)*). These rules will cease to have effect 40 days after being laid before Parliament if not approved by both the House of Commons and the House of Lords within that period.