

2023 No. 1397 (L. 11)

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURT, ENGLAND AND WALES

The Civil Procedure (Amendment No. 4) Rules 2023

Approved by both Houses of Parliament

Made - - - - 14th December 2023

Laid before Parliament 18th December 2023

Coming into force 20th December 2023

The Lord Chancellor makes the following Rules in exercise of the power conferred by paragraph 7 of Schedule 10 to the National Security Act 2023(a) (“Schedule 10”) to make rules of court under section 1 of the Civil Procedure Act 1997(b) and paragraphs 2 to 4 and 6 of Schedule 10.

Before making these Rules, the Lord Chancellor has consulted with the Lady Chief Justice of England and Wales in accordance with paragraph 7(2)(a) of Schedule 10.

Citation and commencement

1. These Rules may be cited as the Civil Procedure (Amendment No. 4) Rules 2023 and come into force on 20th December 2023.

Interpretation

2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(c).

Amendments to the Civil Procedure Rules 1998

3. The Civil Procedure Rules 1998 are amended in accordance with rules 4 to 22 of these Rules.

Amendment of the heading to Part 80

4. In the heading to Part 80, at the end insert “and Part 2 of the National Security Act 2023”.

(a) 2023 c. 32.

(b) 1997 c. 12.

(c) S.I. 1998/3132. Part 80 was inserted by S.I. 2011/2970.

Amendment of the Table of Contents to Part 80

5. In the Table of Contents to Part 80—

- (a) in the entry for Section 2 of the Part, at the end insert “AND PART 2 NOTICES”; and
- (b) in the entry for rule 80.7, for “Act” substitute “TPIM Act or section 53 of the National Security Act”.

Amendment of rule 80.1

6. In rule 80.1—

- (a) in paragraph (1)(a), after “proceedings” insert “and relevant proceedings”;
- (b) in paragraph (2), for “Act” substitute “TPIM Act or section 53(2) of the National Security Act”;
- (c) in paragraph (3)—
 - (i) in sub-paragraph (a)—
 - (aa) for “the Act” substitute “the TPIM Act”; and
 - (bb) after “2011” insert “and “the National Security Act” means the National Security Act 2023”;
 - (ii) in sub-paragraph (c)—
 - (aa) for “Act” substitute “TPIM Act”; and
 - (bb) after “TPIM notice” insert “, or (as the case may be) section 41(2) of the National Security Act extending a Part 2 notice”;
 - (iii) in sub-paragraph (d), for “Act” substitute “TPIM Act or (as the case may be) of Schedule 10 to the National Security Act”;
 - (iv) in sub-paragraph (e), for “Act)” substitute “TPIM Act) or (as the case may be) prevention and investigation measures (which has the same meaning as in section 39(2) of the National Security Act)”;
 - (v) after sub-paragraph (f) insert—
 - “(fa) “Part 2 notice” has the same meaning as in section 39(1) of the National Security Act;
 - (fb) “Part 2 subject” means an individual on whom the Secretary of State has imposed, or is proposing to impose, measures by means of a Part 2 notice;”;
 - (vi) in sub-paragraph (g), for “Act” substitute “TPIM Act or (as the case may be) of Schedule 10 to the National Security Act”;
 - (vii) after sub-paragraph (h) insert—
 - “(ha) “relevant proceedings” has the same meaning as in section 62(1) of the National Security Act;”;
 - (viii) in sub-paragraph (i)—
 - (aa) before “Act” insert “TPIM”; and
 - (bb) after “TPIM notice” insert “, or (as the case may be) under section 49(6) of the National Security Act, reviving a Part 2 notice”;
 - (ix) in sub-paragraph (j), for “Act” substitute “TPIM Act or of Schedule 10 to the National Security Act”;
 - (x) in sub-paragraphs (k) and (l), before “Act” insert “TPIM”; and
 - (xi) in sub-paragraph (n)—
 - (aa) before “Act” insert “TPIM”; and
 - (bb) after “consent” insert “, or (as the case may be) under section 48(1)(c) of the National Security Act, varying the Part 2 notice without the individual’s consent”.

Amendment of the heading to Section 2 of Part 80

7. In the heading to Section 2 of Part 80, at the end insert “AND PART 2 NOTICES”.

Amendment of rule 80.3

8. In rule 80.3—

- (a) in paragraph (a), for “Act” substitute “TPIM Act or section 42(1)(b) of the National Security Act”;
- (b) in paragraph (b), for “Act” substitute “TPIM Act or of Schedule 8 to the National Security Act”; and
- (c) in paragraph (c)—
 - (i) before “Act” insert “TPIM”; and
 - (ii) at the end insert “or section 52 of the National Security Act (appeals relating to a Part 2 notice)”.

Amendment of rule 80.4

9. In rule 80.4—

- (a) in the opening words, for “Act” substitute “TPIM Act or section 42(1)(b) of the National Security Act”; and
- (b) in paragraph (d), after “TPIM” insert “or Part 2”.

Amendment of rule 80.5

10. In rule 80.5—

- (a) in the opening words, for “Act” substitute “TPIM Act or of Schedule 8 to the National Security Act”;
- (b) in paragraph (a), at the end insert “or Part 2 notice”; and
- (c) in paragraph (d), at the end insert “or Part 2 notice”.

Amendment of rule 80.6

11. In rule 80.6—

- (a) for paragraphs (1) to (3) substitute—

“(1) If the court gives permission on an application under section 6(1)(b) of the TPIM Act or section 42(1)(b) of the National Security Act, or confirms a TPIM notice on a reference under paragraph 3(1) of Schedule 2 to the TPIM Act or a Part 2 notice on a reference under paragraph 3(1) of Schedule 8 to the National Security Act, the court must give directions for a directions hearing at which the TPIM subject or Part 2 subject, the TPIM subject’s or Part 2 subject’s legal representative, the special advocate (if one has been appointed) and the Secretary of State’s legal representative may be present.

(2) In a case where permission is given (following an application under section 6(1)(b) of the TPIM Act or section 42(1)(b) of the National Security Act), the date to be fixed for the directions hearing must, unless the court otherwise directs, be no later than 7 days after the date on which the TPIM notice is served on the TPIM subject or the Part 2 notice is served on the Part 2 subject.

(3) In a case where the TPIM notice or Part 2 notice is confirmed (following a reference under paragraph 3(1) of Schedule 2 to the TPIM Act or paragraph 3(1) of Schedule 8 to the National Security Act), the date to be fixed for the directions hearing must, unless the court otherwise directs, be no later than 7 days after the date on which the court confirms the TPIM notice or Part 2 notice.”; and

- (b) in paragraph (4)(a), for “Act” substitute “TPIM Act or (as the case may be) section 45(1) of the National Security Act”.

Amendment of rule 80.7

12. In rule 80.7—

- (a) in the heading, for “Act” substitute “TPIM Act or section 52 of the National Security Act”; and
- (b) after “notice)” insert “or section 52 of the National Security Act (appeals relating to a Part 2 notice)”.

Amendment of rule 80.8

13. In rule 80.8—

- (a) in paragraph (1), for “Act” substitute “TPIM Act or section 52 of the National Security Act”; and
- (b) in paragraph (2), for “Act” substitute “TPIM Act or section 52 of the National Security Act”.

Amendment of rule 80.9

14. In rule 80.9—

- (a) in paragraph (1), after “TPIM” insert “or Part 2”;
- (b) in paragraph (2), after “TPIM” in both places where it occurs insert “or Part 2”;
- (c) in paragraph (3), after “TPIM” insert “or Part 2”; and
- (d) in paragraph (4), after “TPIM” in the five places where it occurs insert “or Part 2”.

Amendment of rule 80.10

15. In rule 80.10—

- (a) in paragraph (1), after “TPIM” in the four places where it occurs insert “or Part 2”; and
- (b) in paragraph (2), after “TPIM” in the four places where it occurs insert “or Part 2”.

Amendment of rule 80.11

16. In rule 80.11(b), after “TPIM” insert “or Part 2”.

Amendment of rule 80.12

17. In rule 80.12(1), after “TPIM proceedings” insert “or relevant proceedings”.

Amendment of rule 80.13

18. In rule 80.13(a), after “TPIM proceedings” insert “or relevant proceedings”.

Amendment of rule 80.14

19. In rule 80.14(1), after “TPIM proceedings” insert “or relevant proceedings”.

Amendment of rule 80.15

20. In rule 80.15—

- (a) in paragraph (1), after “TPIM” in both places where it occurs insert “or Part 2”;

- (b) in paragraph (2), after “TPIM proceedings” insert “or relevant proceedings”; and
- (c) in paragraph (4)—
 - (i) after “TPIM” insert “or Part 2”; and
 - (ii) for “Act” substitute “TPIM Act or of Schedule 10 to the National Security Act.”.

Amendment of rule 80.17

21. In rule 80.17—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “Act” substitute “TPIM Act or section 45(1) of the National Security Act”; and
 - (ii) in sub-paragraph (b)—
 - (aa) before “Act” insert “TPIM”; and
 - (bb) after “notice)” insert “or section 52 of the National Security Act (appeals relating to a Part 2 notice)”;
- (b) in paragraph (2), for “Act” substitute “TPIM Act or section 45(3) of the National Security Act”; and
- (c) in paragraph (3), after “TPIM” in the four places where it occurs insert “or Part 2”.

Amendment of rule 80.19

22. In rule 80.19(1)—

- (a) for “Schedule 4 to the Act” substitute “Schedule 4 to the TPIM Act and of Schedule 10 to the National Security Act”;
- (b) in sub-paragraph (a), for “section 6(1)(b) of the Act” substitute “section 6(1)(b) of the TPIM Act or section 42(1)(b) of the National Security Act”; and
- (c) in sub-paragraph (b), for “Schedule 2 to the Act” substitute “Schedule 2 to the TPIM Act or paragraph 3(1) of Schedule 8 to the National Security Act”.

Signed by authority of the Lord Chancellor

14th December 2023

Bellamy
Parliamentary Under-Secretary of State for Justice
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Civil Procedure Rules 1998 (S.I. 1998/3132) by amending Part 80, which contains rules about proceedings under the Terrorism Prevention and Investigation Measures Act 2011, so that in addition to proceedings about terrorism prevention and investigation measures (TPIMs) it also covers proceedings under Part 2 of the National Security Act 2023 (prevention and investigation measures).

The National Security Act 2023 (“the National Security Act”) provides for the imposition of measures by way of notice (a “Part 2 notice”) on individuals whom the Secretary of State

reasonably believes to be, or to have been, involved in UK threat activity. This corresponds to a TPIM notice.

Section I of Part 80 contains rules about the scope, interpretation and application of the Part, and rule 80.1 is amended to include terms specific to the National Security Act and to ensure that other defined terms operate appropriately for the National Security Act. Rule 80.2, which modifies the overriding objective for the purposes of Part 80 by placing a duty on the court to ensure that information is not disclosed contrary to the public interest and by requiring that the overriding objective be read and given effect in a way which is compatible with that duty, does not require modification and, together with the rest of Part 80, is subject to paragraph 5(1) of Schedule 10 to the National Security Act which provides that nothing in rules made for the purposes of Part 2 of the National Security Act is to be read as requiring the court to act in a manner inconsistent with the right of the person subject to the measures (“the measures subject”) to a fair trial under article 6 of the European Convention on Human Rights.

Section II of Part 80 contains rules about—

- applications by the Secretary of State for permission to impose measures;
- references of measures imposed by the Secretary of State without permission;
- the requirement for directions to be given for a review hearing following permission being granted or a notice imposing measures being confirmed by the court; and
- appeals to the High Court against—
 - the extension or revival of a notice imposing measures;
 - the variation, without the consent of the person subject to the measure, of a measure imposed by a notice; or
 - a decision by the Secretary of State on an application by the person subject to the measures for permission in connection with a measure specified in the notice, for the revocation of the notice or for the variation of a measure specified in the notice.

These rules are modified so that they apply appropriately to measures under Part 2 of the National Security Act and Part 2 notices as well as to TPIMs.

Rule 80.8 modifies the application of Part 52 of the CPR (appeals) to appeals to the High Court relating to measures; rule 80.9 makes provision in relation to the person subject to the measures giving notice of appeal, and rules 80.10 and 80.11 prescribe the time limit for giving notice of appeal and for the Secretary of State’s reply. Each of these rules is amended so that Part 2 notices and measures under Part 2 of the National Security Act are covered in the same way as TPIM notices and TPIMs.

Section III contains a rule modifying the application of Part 52 of the CPR (appeals) to appeals to the Court of Appeal against an order of the High Court in TPIM proceedings, and is amended to cover appeals against orders in proceedings under Part 2 of the National Security Act in the same way.

The rules in Section IV of Part 80 are general provisions applying to all proceedings to which Part 80 applies, and are amended so that they apply to proceedings under Part 2 of the National Security Act in the same way as they do to TPIM proceedings. They include provision for—

- applications for an order requiring anonymity for the person subject to measures (rule 80.15);
- hearings (rules 80.16 to 80.18);
- notifying the Attorney General of proceedings, the functions of a special advocate and the special advocate’s communications with others (rules 80.19 to 80.21);
- the modification of the general rules of evidence and disclosure (rule 80.22);
- the filing and service of relevant material by the Secretary of State (rule 80.23);

- applications by the Secretary of State to withhold closed material from a relevant party and consideration of that application or of the Secretary of State’s objection to a special advocate’s proposed communication (rules 80.24 and 80.25);
- the order in which the filing and service of material and submissions must take place and directions of the court (rules 80.26 and 80.27);
- the court to withhold any or part of its reasons when giving judgment if it is not possible to give reasons without disclosing information contrary to the public interest (rule 80.28);
- applications by the Secretary of State for the court to reconsider the terms of any order or direction given in the Secretary of State’s absence, or the terms of any judgment, to prevent the disclosure of information contrary to the public interest (rule 80.29).

A full impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sectors is foreseen.

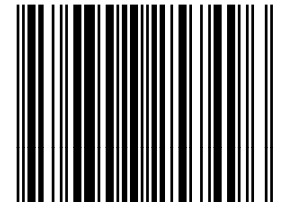
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