

LORDS AMENDMENTS TO THE
COUNTER-TERRORISM AND SECURITY BILL

[The page and line references are to HL Bill 75, the bill as first printed for the Lords.]

Clause 1

1 Page 1, line 8, at end insert—

“() In Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services)—

(a) in Part 1 (services), after paragraph 45 insert—

“Extension of time for retention of travel documents

45A (1) Civil legal services provided in relation to proceedings under paragraph 8 of Schedule 1 to the Counter-Terrorism and Security Act 2015.

Exclusions

(2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.”;

(b) in Part 3 (advocacy: exclusion and exceptions), after paragraph 22 insert—

“22A Advocacy in proceedings before a District Judge (Magistrates’ Courts) under paragraph 8 of Schedule 1 to the Counter-Terrorism and Security Act 2015.””

2 Page 1, line 8, at end insert—

“() In Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)) (civil legal services: excluded services), in paragraph 2(d) (proceedings in court of summary jurisdiction in relation to which funding for representation may be provided), after paragraph (xx) insert—

“(xxi) under paragraph 8 of Schedule 1 to the Counter-Terrorism and Security Act 2015;”.

Clause 2

3 Page 2, line 4, leave out “D” and insert “E”

4 Page 2, line 15, at end insert –

“(6A) Condition E is that –

- (a) the court gives the Secretary of State permission under section (*Temporary exclusion orders: prior permission of the court*), or
- (b) the Secretary of State reasonably considers that the urgency of the case requires a temporary exclusion order to be imposed without obtaining such permission.”

After Clause 2

5 Insert the following new Clause –

“Temporary exclusion orders: prior permission of the court

- (1) This section applies if the Secretary of State –
 - (a) makes the relevant decisions in relation to an individual, and
 - (b) makes an application to the court for permission to impose a temporary exclusion order on the individual.
- (2) The function of the court on the application is to determine whether the relevant decisions of the Secretary of State are obviously flawed.
- (3) The court may consider the application –
 - (a) in the absence of the individual,
 - (b) without the individual having been notified of the application, and
 - (c) without the individual having been given an opportunity (if the individual was aware of the application) of making any representations to the court.
- (4) But that does not limit the matters about which rules of court may be made.
- (5) In determining the application, the court must apply the principles applicable on an application for judicial review.
- (6) In a case where the court determines that any of the relevant decisions of the Secretary of State is obviously flawed, the court may not give permission under this section.
- (7) In any other case, the court must give permission under this section.
- (8) Schedule (*Urgent temporary exclusion orders: reference to the court etc*) makes provision for references to the court etc where temporary exclusion orders are imposed in cases of urgency.
- (9) Only the Secretary of State may appeal against a determination of the court under –
 - (a) this section, or
 - (b) Schedule (*Urgent temporary exclusion orders: reference to the court etc*);
 and such an appeal may only be made on a question of law.
- (10) In this section “the relevant decisions” means the decisions that the following conditions are met –
 - (a) condition A;

- (b) condition B;
- (c) condition C;
- (d) condition D.”

After Clause 9

6 Insert the following new Clause –

“Review of decisions relating to temporary exclusion orders

- (1) This section applies where an individual who is subject to a temporary exclusion order is in the United Kingdom.
- (2) The individual may apply to the court to review any of the following decisions of the Secretary of State –
 - (a) a decision that any of the following conditions was met in relation to the imposition of the temporary exclusion order –
 - (i) condition A;
 - (ii) condition B;
 - (iii) condition C;
 - (iv) condition D;
 - (b) a decision to impose the temporary exclusion order;
 - (c) a decision that condition B continues to be met;
 - (d) a decision to impose any of the permitted obligations on the individual by a notice under section 8.
- (3) On a review under this section, the court must apply the principles applicable on an application for judicial review.
- (4) On a review of a decision within subsection (2)(a) to (c), the court has the following powers (and only those powers) –
 - (a) power to quash the temporary exclusion order;
 - (b) power to give directions to the Secretary of State for, or in relation to, the revocation of the temporary exclusion order.
- (5) If the court does not exercise either of its powers under subsection (4), the court must decide that the temporary exclusion order is to continue in force.
- (6) On a review of a decision within subsection (2)(d), the court has the following powers (and only those powers) –
 - (a) power to quash the permitted obligation in question;
 - (b) if that is the only permitted obligation imposed by the notice under section 8, power to quash the notice;
 - (c) power to give directions to the Secretary of State for, or in relation to –
 - (i) the variation of the notice so far as it relates to that permitted obligation, or
 - (ii) if that is the only permitted obligation imposed by the notice, the revocation of the notice.
- (7) If the court does not exercise any of its powers under subsection (6), the court must decide that the notice under section 8 is to continue in force.

- (8) If the court exercises a power under subsection (6)(a) or (c)(i), the court must decide that the notice under section 8 is to continue in force subject to that exercise of that power.
- (9) The power under this section to quash a temporary exclusion order, permitted obligation or notice under section 8 includes—
- (a) in England and Wales or Northern Ireland, power to stay the quashing for a specified time, or pending an appeal or further appeal against the decision to quash; or
 - (b) in Scotland, power to determine that the quashing is of no effect for a specified time or pending such an appeal or further appeal.
- (10) An appeal against a determination of the court on a review under this section may only be made on a question of law.
- (11) For the purposes of this section, a failure by the Secretary of State to make a decision whether condition B continues to be met is to be treated as a decision that it continues to be met.”

7 Insert the following new Clause—

“Temporary exclusion orders: proceedings and appeals against convictions

- (1) Schedule (*Temporary exclusion orders: proceedings*) makes provision about proceedings relating to temporary exclusion orders.
- (2) Schedule (*Temporary exclusion orders: appeals against convictions*) makes provision about appeals against convictions in cases where a temporary exclusion order, a notice under section 8 or a permitted obligation is quashed.”

Clause 11

8 Page 7, line 15, at end insert—

““condition A”, “condition B”, “condition C”, “condition D” or “condition E” means that condition as set out in section 2;

“court” means—

- (a) in the case of proceedings relating to an individual whose principal place of residence is in Scotland, the Outer House of the Court of Session;
- (b) in the case of proceedings relating to an individual whose principal place of residence is in Northern Ireland, the High Court in Northern Ireland;
- (c) in any other case, the High Court in England and Wales;”

After Clause 11

9 Insert the following new Clause—

“Chapter 2: consequential amendments

- (1) In paragraph 2 of Schedule 1 to the Senior Courts Act 1981 (business allocated to the Queen’s Bench Division), after paragraph (bd) insert—
 - “(be) all TEO proceedings (within the meaning given by paragraph 1 of Schedule (*Temporary exclusion orders: proceedings*) to the Counter-Terrorism and Security Act

- 2015) (proceedings relating to temporary exclusion orders);”.
- (2) In section 133(5) of the Criminal Justice Act 1988 (compensation for miscarriages of justice) –
 - (a) omit “or” at the end of paragraph (e);
 - (b) after paragraph (f) insert “or
 - (g) on an appeal under Schedule (*Temporary exclusion orders: appeals against conviction*) to the Counter-Terrorism and Security Act 2015.”
 - (3) In section 18 of the Regulation of Investigatory Powers Act 2000 (exclusion of matter from legal proceedings: exceptions) –
 - (a) in subsection (1), after paragraph (dd) insert –
 - “(de) any TEO proceedings (within the meaning given by paragraph 1 of Schedule (*Temporary exclusion orders: proceedings*) to the Counter-Terrorism and Security Act 2015 (temporary exclusion orders: proceedings)) or any proceedings arising out of such proceedings;”;
 - (b) in subsection (2), after paragraph (zc) insert –
 - “(zd) in the case of proceedings falling within paragraph (de), to –
 - (i) a person, other than the Secretary of State, who is or was a party to the proceedings, or
 - (ii) any person who for the purposes of the proceedings (but otherwise than by virtue of appointment as a special advocate under Schedule (*Temporary exclusion orders: proceedings*) to the Counter-Terrorism and Security Act 2015) represents a person falling within sub-paragraph (i);”.

After Clause 18

10 Insert the following new Clause –

“Authority-to-carry schemes: entry into force etc

- (1) An authority-to-carry scheme comes into force in accordance with regulations made by the Secretary of State by statutory instrument.
- (2) The Secretary of State must not make regulations bringing a scheme into force unless –
 - (a) a draft of the regulations and the scheme to which they relate have been laid before Parliament, and
 - (b) the draft regulations have been approved by a resolution of each House.
- (3) If the Secretary of State revises an authority-to-carry scheme, the revised scheme comes into force in accordance with regulations made by the Secretary of State by statutory instrument.
- (4) The Secretary of State must not make regulations bringing a revised scheme into force unless –

- (a) a draft of the regulations and the revised scheme to which they relate have been laid before Parliament, and
 - (b) the draft regulations have been approved by a resolution of each House.
- (5) Regulations under this section may include transitional or saving provision.”

Clause 19

- 11 Page 12, line 25, leave out from “refer,” to end of line 27

Clause 21

- 12 Page 13, line 36, after “to” insert “the exercise of particular functions or to”
- 13 Page 13, line 38, after “to” insert “those functions or”

Clause 24

- 14 Page 15, line 20, at end insert –
- “(4A) Guidance issued under subsection (1) takes effect on whatever day the Secretary of State appoints by regulations made by statutory instrument.
A statutory instrument containing regulations under this subsection 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.”
- 15 Page 15, line 23, leave out “and (3)” and insert “, (3) and (4A)”

After Clause 25

- 16 Insert the following new Clause –

“Freedom of expression in universities etc

- (1) This section applies to a specified authority if it is the proprietor or governing body of –
- (a) an institution that provides further education (within the meaning given by section 2(3) of the Education Act 1996), or
 - (b) an institution that provides courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).
- (2) When carrying out the duty imposed by section 21(1), a specified authority to which this section applies –
- (a) must have particular regard to the duty to ensure freedom of speech, if it is subject to that duty;
 - (b) must have particular regard to the importance of academic freedom, if it is the proprietor or governing body of a qualifying institution.
- (3) When issuing guidance under section 24 to specified authorities to which this section applies, the Secretary of State –
- (a) must have particular regard to the duty to ensure freedom of speech, in the case of authorities that are subject to that duty;

- (b) must have particular regard to the importance of academic freedom, in the case of authorities that are proprietors or governing bodies of qualifying institutions.
- (4) When considering whether to give directions under section 25 to a specified authority to which this section applies, the Secretary of State –
- (a) must have particular regard to the duty to ensure freedom of speech, in the case of an authority that is subject to that duty;
 - (b) must have particular regard to the importance of academic freedom, in the case of an authority that is the proprietor or governing body of a qualifying institution.
- (5) In this section –
- “the duty to ensure freedom of speech” means the duty imposed by section 43(1) of the Education (No. 2) Act 1986;
 - “academic freedom” means the freedom referred to in section 202(2)(a) of the Education Reform Act 1988;
 - “qualifying institution” has the meaning given by section 202(3) of that Act.”

17 Insert the following new Clause –

“Monitoring of performance: further and higher education bodies

- (1) In this section –
- “monitoring authority” has the meaning given by subsection (4);
 - “relevant further education body” means the governing body or proprietor of an institution in England or Wales that –
 - (a) is subject to the duty imposed by section 21(1), and
 - (b) is subject to that duty because it is an institution at which more than 250 students are undertaking courses in preparation for examinations related to qualifications regulated by the Office of Qualifications and Examinations Regulation or the Welsh Government;
 - “relevant higher education body” means the governing body or proprietor of an institution in England or Wales that is subject to the duty imposed by section 21(1) because it is –
 - (a) a qualifying institution within the meaning given by section 11 of the Higher Education Act 2004, or
 - (b) an institution at which more than 250 students are undertaking courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).
- (2) A relevant further education body or relevant higher education body must give to the monitoring authority any information that the monitoring authority may require for the purposes of monitoring that body’s performance in discharging the duty imposed by section 21(1).
- (3) The information that the monitoring authority may require under subsection (2) includes information which specifies the steps that will be taken by the body in question to ensure that it discharges the duty imposed by section 21(1).
- (4) The “monitoring authority” for a relevant further education body or a relevant higher education body is –

- (a) the Secretary of State, or
- (b) a person to whom the Secretary of State delegates the function under subsection (2) in relation to that body.

The Secretary of State must consult the Welsh Ministers before delegating the function under subsection (2) in relation to institutions in Wales.

- (5) A delegation under subsection (4)(b) must be made by giving notice in writing to the person to whom the delegation is made if—
 - (a) that person is Her Majesty’s Chief Inspector of Education, Children’s Services and Skills or Her Majesty’s Chief Inspector of Education and Training in Wales, and the function is delegated in relation to relevant further education bodies;
 - (b) that person is the Higher Education Funding Council for England or the Higher Education Funding Council for Wales, and the function is delegated in relation to relevant higher education bodies.
- (6) Otherwise, a delegation under subsection (4)(b) must be made by regulations.
- (7) The Secretary of State must publish any notice given under subsection (5).
- (8) Regulations under subsection (6) are to be made by statutory instrument; and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section—
 - (a) “institution in England” means an institution whose activities are carried on, or principally carried on, in England, and includes the Open University;
 - (b) “institution in Wales” means an institution whose activities are carried on, or principally carried on, in Wales.”

18 Insert the following new Clause—

“Power to give directions: section (Monitoring of performance: further and higher education bodies)

- (1) Where the Secretary of State is satisfied that a relevant further education body or a relevant higher education body has failed to comply with a requirement under section (*Monitoring of performance: further and higher education bodies*)(2), the Secretary of State may give directions to the body for the purpose of enforcing compliance.
- (2) A direction under this section may be enforced, on an application made on behalf of the Secretary of State, by a mandatory order.
- (3) The Secretary of State must consult the Welsh Ministers before giving directions under subsection (1) in relation to institutions in Wales.
- (4) In this section “relevant further education body”, “relevant higher education body” and “institution in Wales” have the same meaning as in section (*Monitoring of performance: further and higher education bodies*).”

Clause 27

19 Page 16, line 5, at end insert—

“() “Function” does not include a function so far as it is exercised outside Great Britain.”

20 Page 16, line 14, leave out “Assembly”

Before Clause 36

21 Insert the following new Clause –

“Reviews of operation of Part 1 etc

- (1) The person appointed under section 36(1) of the Terrorism Act 2006 (“the independent reviewer”) is also responsible for reviewing the operation of the provisions listed in subsection (2).
- (2) The provisions are –
 - (a) Part 1 of the Anti-Terrorism, Crime and Security Act 2001;
 - (b) Part 2 of that Act as it applies in cases where a use or threat of the action referred to in section 4(2) of that Act would constitute terrorism;
 - (c) the Counter-Terrorism Act 2008;
 - (d) Part 1 of this Act.
- (3) In each calendar year the independent reviewer must, by 31 January, inform the Secretary of State and the Treasury what (if any) reviews under this section the reviewer intends to carry out in that year.
Those reviews must be completed during that year or as soon as reasonably practicable after the end of it.
- (4) The independent reviewer must send to the Secretary of State a report on the outcome of each review as soon as reasonably practicable after the review is completed.
- (5) On receiving a report under subsection (4), the Secretary of State must lay a copy of it before Parliament.
- (6) The expenses and allowances that may be paid under section 36(6) of the Terrorism Act 2006 include expenses and allowances in respect of functions under this section.
- (7) In this section “terrorism” has the same meaning as in the Terrorism Act 2000 (see section 1(1) to (4) of that Act).”

22 Insert the following new Clause –

“Reviews of operation of other terrorism legislation

- (1) In section 36 of the Terrorism Act 2006 (review of terrorism legislation) –
 - (a) in subsection (2), for “carry out a review of those provisions and,” substitute “carry out –
 - (a) a review of the provisions of the Terrorism Act 2000, and
 - (b) a review of the provisions of Part 1 of this Act, and,”;
 - (b) in subsection (4), for “subsection (2)” substitute “subsection (2)(a)”;
 - (c) after subsection (4B) insert –

- “(4C) In each calendar year the person appointed under subsection (1) must, by 31 January, inform the Secretary of State what (if any) reviews under subsection (2)(b) the person intends to carry out in that year.
Those reviews must be completed during that year or as soon as reasonably practicable after the end of it.”
- (2) In section 31 of the Terrorist Asset-Freezing etc. Act 2010 (independent review of operation of Part 1 of that Act), for subsection (2) substitute –
- “(2) In each calendar year the person appointed under subsection (1) must, by 31 January, inform the Treasury what (if any) reviews under this section the person intends to carry out in that year.
Those reviews must be completed during that year or as soon as reasonably practicable after the end of it.”
- (3) In section 20 of the Terrorism Prevention and Investigation Measures Act 2011 (reviews of the operation of that Act) –
- (a) for subsections (2) and (3) substitute –
- “(2) In each calendar year the independent reviewer must, by 31 January, inform the Secretary of State what (if any) reviews under this section the reviewer intends to carry out in that year.
Those reviews must be completed during that year or as soon as reasonably practicable after the end of it.”;
- (b) omit subsections (7) to (9).”

Clause 36

23 Page 22, line 25, leave out paragraph (b)

24 Page 22, line 33, leave out subsection (4) and insert –

- “() Regulations under this section must –
- (a) provide for the Secretary of State to appoint members of the board after considering any recommendations made by the person appointed under section 36(1) of the Terrorism Act 2006;
- (b) provide for the board to be chaired by that person and to be subject to his or her direction and control.”

Clause 39

25 Page 24, line 16, at end insert –

- “() A reference to a calendar year in the following subsections does not include a year before 2016 –
- (a) subsection (3) of section (*Reviews of operation of Part 1 etc*);
- (b) subsection (4C) of section 36 of the Terrorism Act 2006 (inserted by section (*Reviews of operation of other terrorism legislation*)(1) above);
- (c) subsection (2) of section 31 of the Terrorist Asset-Freezing etc. Act 2010 (substituted by section (*Reviews of operation of other terrorism legislation*)(2) above);
- (d) subsection (2) of section 20 of the Terrorism Prevention and Investigation Measures Act 2011 (substituted by section (*Reviews of operation of other terrorism legislation*)(3) above).”

Clause 42

- 26 Page 25, line 6, leave out paragraph (a) and insert –
“(a) sections 28 to 30 and 32;”
- 27 Page 25, line 7, leave out “section” and insert “sections (*Reviews of operation of Part 1 etc*) to”
- 28 Page 25, line 12, leave out “Part 2” and insert “paragraphs 12 to 14”
- 29 Page 25, line 12, leave out “that Part” and insert “those paragraphs”
- 30 Page 25, line 13, leave out paragraph (d) and insert –
“(d) sections 21 and 25, section (Freedom of expression in universities etc)(2) and (4) and sections (Monitoring of performance: further and higher education bodies) to 26”

After Schedule 1

- 31 Insert the following new Schedule –

“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 (*Temporary exclusion orders: prior permission of the court*).

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.
 - (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(6A)(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."

32 Insert the following new Schedule –

"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 (*Temporary exclusion orders: prior permission of the court*),
- (b) a reference under Schedule (*Urgent temporary exclusion orders: reference to the court etc*),
- (c) a review under section (*Review of decisions relating to temporary exclusion orders*), 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 –
 - (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.
- (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).
- (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
 - (b) the application of sections 6 to 14 of the Justice and Security Act 2013 (closed material proceedings).”

33 Insert the following new Schedule—

“TEMPORARY EXCLUSION ORDERS: APPEALS AGAINST CONVICTIONS

Right of appeal

- 1 (1) An individual who has been convicted of an offence under section 9(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 9(3) may appeal against the conviction if –
- (a) a notice under section 8, 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."

Schedule 3

34 Page 47, line 24, at beginning insert—

"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."

35 Page 48, line 20, at end insert—

"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)."

36 Page 48, line 28, leave out "Assembly"

Schedule 4

37 Page 50, line 5, at end insert—

“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.”

38 Page 50, line 44, at end insert—

“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).”

39 Page 51, line 6, leave out “Assembly”

LORDS AMENDMENTS TO THE
COUNTER-TERRORISM AND
SECURITY BILL

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