

Rules made by the Lord Chancellor, laid before Parliament under paragraph 7(5)(a) of Schedule 3 to the Counter-Terrorism and Security Act 2015, for approval by resolution of each House of Parliament within forty days beginning with the day on which the Rules were made, subject to extensions for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2015 No. 406 (L. 3)

**SENIOR COURTS OF ENGLAND AND WALES
COUNTY COURT, ENGLAND AND WALES**

The Civil Procedure (Amendment) Rules 2015

Made - - - - 26th February 2015

Laid before Parliament 27th February 2015

Coming into force in accordance with rule 1

The Lord Chancellor makes the following Rules in exercise of the power conferred by paragraph 7 of Schedule 3 to the Counter-Terrorism and Security Act 2015(1) (“the 2015 Act”) to make rules under section 1 of the Civil Procedure Act 1997(2) and paragraphs 2 to 4 and 6 of Schedule 3 to the 2015 Act.

Before making these Rules, the Lord Chancellor has consulted the Lord Chief Justice of England and Wales in accordance with paragraph 7(2)(a) of Schedule 3 to the 2015 Act.

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment) Rules 2015 and come into force on the day after the day on which they are made.

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(3).

Amendments to the Civil Procedure Rules 1998

3. In rule 1.2(4) (application by the court of the overriding objective), for “and 82.2” substitute “, 82.2 and 88.2”.

(1) 2015 c. 6.

(2) 1997 c.12. Section 1 was substituted by section 82(1) of the Courts Act 2003 (c.39) and further amended by the Constitutional Reform Act 2005 (c.4), sections 15 and 146 and Schedule 4, paragraphs 261 and 262 and Schedule 18.

(3) S.I. 1998/3132.

(4) Rule 1.2 was amended in particular by S.I. 2013/1571, rule 3.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

4. After Part 87, insert Part 88 (proceedings under the Counter-Terrorism and Security Act 2015) as set out in the Schedule to these Rules.

Signed by authority of the Lord Chancellor

26th February 2015

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE

Rule 4

“PART 88
 PROCEEDINGS UNDER THE COUNTER-
 TERRORISM AND SECURITY ACT 2015

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SECTION I

Application of this Part

Scope and interpretation

88.1.—(1) This Part contains rules about—

- (a) TEO proceedings in the High Court; and
- (b) appeals to the Court of Appeal against an order of the High Court in such proceedings.

(2) In this Part—

- (a) “the Act” means the Counter-Terrorism and Security Act 2015;
- (b) “closed material” means any relevant material that the Secretary of State objects to disclosing to a relevant party on the grounds that disclosure is contrary to the public interest;
- (c) “legal representative” is to be construed in accordance with paragraph 4(4)(b) of Schedule 3 to the Act;
- (d) “TEO” means a temporary exclusion order (which has the same meaning as in section 2 of the Act);

- (e) “open material” means any relevant material that the Secretary of State does not object to disclosing to a relevant party on the grounds that disclosure is contrary to the public interest;
- (f) “relevant material” means the material described in paragraph 3(1)(a) to (c) of Schedule 3 to the Act;
- (g) “relevant party” means any party to the proceedings other than the Secretary of State;
- (h) “special advocate” means a person appointed under paragraph 10(1) of Schedule 3 to the Act;
- (i) “TEO proceedings” has the same meaning as in paragraph 1 of Schedule 3 to the Act;
- (j) “TEO subject” means an individual on whom the Secretary of State has imposed, or is proposing to impose, a TEO.

(3) For the purposes of this Part, disclosure is contrary to the public interest if it is made contrary to the interests of national security, the international relations of the United Kingdom or the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm the public interest.

Modification to the overriding objective

88.2.—(1) Where any of the rules in this Part applies, the overriding objective in Part 1, and so far as possible any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(2) The court must ensure that information is not disclosed in a way which would be damaging to the interests of national security.

(3) Subject to paragraph (2), the court must satisfy itself that the material available to it enables it properly to determine proceedings.

SECTION II

Permission applications, reviews and references to the High Court relating to temporary exclusion orders

Scope of this Section

88.3. This Section contains rules about—

- (a) applications under section 3(1)(b) of the Act (application for permission to impose a TEO);
- (b) references under paragraph 3(1) of Schedule 2 to the Act (reference of the imposition of measures imposed without permission); and
- (c) applications to the High Court under section 11 of the Act (applications to the court to review decisions of the Secretary of State relating to a TEO).

Application for permission to impose a TEO

88.4. An application under section 3(1)(b) of the Act for permission to impose a TEO must be made by the Secretary of State filing with the court—

- (a) a statement of reasons to support the application;
- (b) any relevant material of which the Secretary of State is aware at that stage; and
- (c) any written submissions.

Reference of TEO imposed without permission

88.5. A reference under paragraph 3(1) of Schedule 2 to the Act of the imposition of a TEO imposed without permission must be made by the Secretary of State filing with the court—

- (a) a statement of reasons for imposing the TEO;
- (b) any relevant material of which the Secretary of State is aware at that stage; and
- (c) any written submissions.

Application for review under section 11 of the Act

88.6. Rules 88.7 to 88.14 apply to a review under section 11 of the Act.

Applications (general) and modification of Part 8

88.7.—(1) An application to the court to review a decision under section 11 of the Act (“a review application”) must be made pursuant to Part 8, as modified by this Part, and subject to paragraph (2).

- (2) The following rules do not apply to a review application—
 - (a) rule 8.1(3) (court may order claim to continue as if claimant had not used Part 8 procedure);
 - (b) rule 8.2A (issue of claim form without naming defendants)(**5**);
 - (c) rule 8.4 (consequence of not filing an acknowledgment of service);
 - (d) rule 8.5 (filing and serving written evidence);
 - (e) rule 8.6 (evidence – general); and
 - (f) rule 8.8 (defendant objects to use of Part 8).

Review application

88.8.—(1) A review application must be started by a claim form.

- (2) The claim form must set out—
 - (a) the details of the decision which it is sought to review;
 - (b) details of how the TEO subject is affected by the TEO; and
 - (c) the grounds on which the TEO subject seeks to review the decision.
- (3) The TEO subject must file with the claim form—
 - (a) a copy of—
 - (i) the written notice under section 4 of the Act of the imposition of the TEO; or
 - (ii) where relevant, any notice under section 9 of the Act imposing any or all of the permitted conditions; and
 - (b) any evidence, including witness statements, on which the TEO subject relies at that stage.

Fixing of directions hearing date

88.9.—(1) When the court issues the claim form it will fix a date for a directions hearing.

(5) Rule 8.2A was inserted by [S.I. 2000/221](#).

(2) Unless the court directs otherwise, the directions hearing will be not less than 14 days but not more than 28 days after the date of issue of the claim form.

Service of the claim form and accompanying documents

88.10. The court must—

- (a) serve on the Secretary of State and any special advocate (if one has been appointed)
 - (i) the claim form; and
 - (ii) the documents specified in rule 88.8(3); and
- (b) send to all parties and to any special advocate a notice of the directions hearing date (where such date is not endorsed on the claim form).

Acknowledgment of service

88.11. Where a special advocate has been appointed, the Secretary of State must serve on that special advocate a copy of the acknowledgment of service filed under rule 8.3.

Directions hearing

88.12. At the directions hearing the court may give case management directions, in particular—

- (a) for the holding of a further hearing to determine the application;
- (b) fixing a date, time and place for the further hearing at which the parties, their legal representatives (if any) and any special advocate can be present; and
- (c) as to the order in which, and the time within which, the following are to be filed and served—
 - (i) any response to the application to be filed and served by the Secretary of State under rule 88.13(1), (2) and (4);
 - (ii) any application to be made under rule 88.13(5);
 - (iii) any information to be filed and served by the Secretary of State pursuant to an order under rule 88.13(7);
 - (iv) any evidence to be filed and served by the TEO subject under rule 88.14(1);
 - (v) any evidence to be filed and served by the Secretary of State under rule 88.14(2);
 - (vi) any application by the Secretary of State under rule 88.13(3), 88.13(8) or 88.14(3); and
 - (vii) any further evidence, including witness statements, written submissions or skeleton arguments, to be filed and served by the parties and any special advocate.

Response by the Secretary of State

88.13.—(1) Where the Secretary of State intends to oppose the exercise of any of the court's powers under section 11(3) or (5) of the Act, the Secretary of State must file with the court—

- (a) the grounds for opposing the exercise of those powers; and
- (b) any relevant evidence of which the Secretary of State is aware at that stage.

(2) Unless the Secretary of State objects to the grounds and evidence referred to in paragraph (1) being disclosed to the TEO subject and the TEO subject's legal representative, the Secretary of State must serve a copy of the grounds and evidence on the TEO subject at the same time as filing them.

(3) Where the Secretary of State objects to the grounds and evidence referred to in paragraph (1) being disclosed to the TEO subject and the TEO subject's legal representative, the Secretary of State must make an application in accordance with rule 88.27.

(4) Where a special advocate has been appointed, the Secretary of State must serve on the special advocate a copy of the grounds and evidence filed under paragraph (1).

(5) The TEO subject and any special advocate may apply to the court for an order directing the Secretary of State to file and serve further information about the Secretary of State's grounds filed under paragraph (1)(a).

(6) An application under paragraph (5) must set out—

- (a) what information is sought; and
- (b) why the information sought is necessary for the determination of the review application.

(7) The court may make an order on an application under paragraph (5) where it considers that the information sought—

- (a) is necessary for the determination of the review application; and
- (b) may be provided without disproportionate cost, time or effort.

(8) Where the Secretary of State objects to serving on the TEO subject and the TEO subject's legal representative the information sought under paragraph (5), the Secretary of State must make an application in accordance with rule 88.27.

Filing and service of evidence

88.14.—(1) Where the TEO subject wishes to rely on evidence in support of the review application and—

- (a) such evidence was not filed with the court with the claim form; or
- (b) such evidence was filed with the court with the claim form but the TEO subject wishes to rely on further evidence,

the TEO subject must file and serve that evidence, including any witness statement, on the Secretary of State and any special advocate.

(2) Where the TEO subject serves evidence in support of the application, the Secretary of State must file and serve, subject to paragraph (3), any further evidence, including any witness statement, on the TEO subject and any special advocate.

(3) Where the Secretary of State wishes to withhold disclosure of any closed material from the TEO subject and the TEO subject's legal representative, the Secretary of State must make an application in accordance with rule 88.27.

(4) The Secretary of State must serve any closed material on the special advocate.

(5) The parties and, where relevant, any special advocate must file and serve any further evidence, including witness statements, written submissions or skeleton arguments, as directed by the court.

SECTION III

Appeals to the Court of Appeal

Modification of Part 52 (appeals)

88.15.—(1) Part 52 (appeals) applies to an appeal to the Court of Appeal against an order of the High Court in TEO proceedings subject to—

- (a) rule 88.2;
- (b) the rules in Section IV of this Part; and
- (c) paragraphs (2) and (3) of this rule.

(2) The following rules do not apply to appeals to the Court of Appeal—

- (a) rule 52.4(1) (appellant’s notice); and
- (b) rule 52.5 (respondent’s notice).

(3) Rule 52.2 (all parties to comply with Practice Directions 52A to 52E) applies, but the parties are not required to comply with paragraphs 3(3), 7.2 and 27 of Practice Direction 52C.
SECTION IV

General provisions

Scope of this Section

88.16. This Section applies to

- (a) TEO proceedings in the High Court; and
- (b) appeals to the Court of Appeal against an order of the High Court in such proceedings.

Address for filing proceedings

88.17.—(1) Any TEO proceedings must be filed at the Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London WC2A 2LL.

(2) Any appeals to the Court of Appeal against an order of the High Court in TEO proceedings must be filed at the Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL.

Applications for anonymity

88.18.—(1) The TEO subject or the Secretary of State may apply for an order requiring anonymity for the TEO subject.

(2) An application under paragraph (1) may be made at any time, irrespective of whether any TEO proceedings have been commenced.

(3) An application may be made without notice to the other party.

(4) The reference in this rule to an order requiring anonymity for the TEO subject is to be construed in accordance with paragraph 6(3) of Schedule 3 to the Act.

Notification of hearings

88.19. Unless the court directs otherwise, it must serve notice of the date, time and place fixed for any hearing on—

- (a) every party, whether or not entitled to attend that hearing; and

- (b) if one has been appointed for the purposes of the hearing, the special advocate or those instructing the special advocate.

Proceedings which must be determined at a hearing

88.20.—(1) The following proceedings must be determined at a hearing—

- (a) a review application under section 11 of the Act (review of decisions relating to temporary exclusion orders);
- (b) an appeal to the Court of Appeal from a decision or order of the High Court made in the proceedings mentioned in sub-paragraph (a) above; and
- (c) a hearing under rule 88.28(2) (consideration of the Secretary of State’s objection or application).

(2) Paragraph (1)(b) does not apply where—

- (a) the appeal is withdrawn by the appellant;
- (b) the Court of Appeal allows the appeal with consent; or
- (c) the Court of Appeal strikes out the appeal.

Hearings in private

88.21.—(1) If the court considers it necessary for any party and that party’s legal representative to be excluded from any hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, it must—

- (a) direct accordingly; and
- (b) conduct the hearing, or that part of it from which that party and that party’s legal representative are excluded, in private but attended by a special advocate to represent the interests of the excluded party.

(2) The court may conduct a hearing or part of a hearing in private for any other good reason.

Appointment of a special advocate

88.22.—(1) Subject to paragraph (2), the Secretary of State must immediately give notice of the proceedings to the Attorney General (who, under paragraph 10(1) of Schedule 3 to the Act, has the power to appoint a special advocate), on—

- (a) making an application under section 3(1)(b) of the Act (application for permission to impose a TEO);
- (b) making a reference under paragraph 3(1) of Schedule 2 to the Act (reference of urgent TEO imposed without permission); or
- (c) being served with a copy of any applications, claim or notice of appeal in proceedings to which this Part applies.

(2) Paragraph (1) applies unless—

- (a) the Secretary of State does not intend to—
 - (i) oppose the application, claim or appeal; or
 - (ii) withhold closed material from a relevant party; or
- (b) a special advocate has already been appointed to represent the interests of the relevant party in the proceedings and that special advocate is not prevented from communicating with that party by virtue of rule 88.24 (special advocate: communicating about proceedings).

(3) Where any proceedings to which this Section applies are pending but no special advocate has been appointed, a relevant party or the Secretary of State may request that the Attorney General appoint a special advocate.

Functions of a special advocate

88.23. The functions of a special advocate are to represent the interests of a relevant party by—

- (a) making submissions to the court at any hearing or part of a hearing from which the relevant party and the relevant party's legal representative are excluded;
- (b) adducing evidence and cross-examining witnesses at any such hearing or part of a hearing;
- (c) making applications to the court or seeking directions from the court where necessary; and
- (d) making written submissions to the court.

Special advocate: communicating about proceedings

88.24.—(1) The special advocate may communicate with the relevant party or the relevant party's legal representative at any time before the Secretary of State serves closed material on the special advocate.

(2) After the relevant person serves closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or (6)(b) or with a direction of the court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the court, communicate about the proceedings with—

- (a) the court;
- (b) the Secretary of State or any person acting for the Secretary of State;
- (c) the Attorney General or any person acting for the Attorney General; or
- (d) any other person, except the relevant party or the relevant party's legal representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the court authorising the special advocate to communicate with the relevant party or the relevant party's legal representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)—

- (a) the court must notify the Secretary of State of the request and of the content of the proposed communication and the form in which it is proposed to be made; and
- (b) the Secretary of State must, within a period specified by the court, file with the court and serve on the special advocate notice of any objection which the Secretary of State has to the proposed communication or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the relevant party from communicating with the special advocate after the Secretary of State has served material on the special advocate, but—

- (a) the relevant party may only communicate with the special advocate in writing through the relevant party's legal representative; and

- (b) the special advocate must not reply to the communication other than in accordance with directions of the court, except that the special advocate may without such directions send a written acknowledgment of receipt to the relevant party's legal representative.

Modification of the general rules of evidence and disclosure

88.25.—(1) Part 31 (disclosure and inspection of documents), Part 32 (evidence) and Part 33 (miscellaneous rules about evidence) do not apply to any proceedings to which this Part applies.

(2) Subject to the other rules in this Part, the evidence of a witness may be given either—

- (a) orally before the court; or
- (b) in writing, in which case it must be given in such manner and at such time as the court directs.

(3) The court may also receive evidence in documentary or any other form.

(4) The court may receive evidence that would not, but for this rule, be admissible in a court of law.

(5) Every party is entitled to adduce evidence and to cross-examine witnesses during any hearing or part of a hearing from which that party and that party's legal representatives are not excluded.

(6) A special advocate is entitled to adduce evidence and to cross-examine a witness only during a hearing or part of a hearing from which the relevant party and the relevant party's legal representatives are excluded.

(7) The court may require a witness to give evidence on oath.

Filing and service of relevant material

88.26. The Secretary of State must—

- (a) make a reasonable search for relevant material; and
- (b) file and serve that material in accordance with the rules in this Part.

Closed material

88.27.—(1) The Secretary of State—

- (a) must apply to the court for permission to withhold closed material from a relevant party or the relevant party's legal representative in accordance with this rule; and
- (b) may not rely on closed material at a hearing on notice unless a special advocate has been appointed to represent the interests of the relevant party.

(2) The Secretary of State must file with the court and, at such time as the court directs, serve on the special advocate—

- (a) the closed material;
- (b) a statement of the Secretary of State's reasons for withholding that material from the relevant party and the relevant party's legal representatives; and
- (c) if the Secretary of State considers it possible to provide a summary of that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the relevant party.

(3) The Secretary of State may at any time amend or supplement material filed under this rule, but only with—

- (a) the agreement of the special advocate; or
- (b) the permission of the court.

Consideration of the Secretary of State’s objection or application

88.28.—(1) This rule applies where the Secretary of State has—

- (a) objected under rule 88.24(5)(b) (special advocate: communicating about proceedings) to a proposed communication by the special advocate; or
- (b) applied under rule 88.27 (closed material) for permission to withhold closed material.

(2) The court must fix a hearing for the Secretary of State and the special advocate to make oral representations, unless—

- (a) the special advocate gives notice that he or she does not challenge the application or objection;
- (b) the court has previously considered—
 - (i) an objection under rule 88.24(5)(b) to the same or substantially the same proposed communication; or
 - (ii) an application under rule 88.27(1) for permission to withhold the same or substantially the same material; and

is satisfied that it would be just to give permission or uphold the objection without a hearing; or

- (c) the Secretary of State and the special advocate consent to the court deciding the objection or application without a hearing.

(3) If the special advocate does not challenge the objection or the application, he or she must give notice of that fact to the court and the Secretary of State no later than the end of—

- (a) 14 days after the date on which the relevant person or the Secretary of State serves on the special advocate the notice under rule 88.24(5)(b) or the material under rule 88.27(2); or
- (b) such other period as the court may direct.

(4) Where the court fixes a hearing under this rule, the Secretary of State and the special advocate must before the hearing file with the court a schedule identifying the issues which cannot be agreed between them, which must also—

- (a) give brief reasons for their contentions in relation to each issue; and
- (b) set out any proposals for the court to resolve those issues.

(5) A hearing under this rule shall take place in the absence of the relevant party and the relevant party’s legal representative.

(6) Where the court gives permission to the Secretary of State to withhold sensitive material, the court must—

- (a) consider whether to direct the relevant person to serve a summary of that material on the relevant party and the relevant party’s legal representative; but
- (b) ensure that any such summary does not contain material the disclosure of which would be contrary to the public interest.

(7) Where the court has not given permission to the Secretary of State to withhold sensitive material from, or has directed the Secretary of State to serve a summary of that material on, the relevant party and the relevant party’s legal representative—

- (a) the Secretary of State shall not be required to serve that material or summary; but

- (b) if the Secretary of State does not do so, at a hearing on notice the court may—
 - (i) if it considers that the material or anything that is required to be summarised might be of assistance to the relevant party in relation to a matter under consideration by the court, direct that the matter is withdrawn from its consideration or that the Secretary of State makes such concessions or takes such other steps as the court may direct; and
 - (ii) in any other case, direct that the Secretary of State must not rely in the proceedings on that material or (as the case may be) on what is required to be summarised.

(8) The court must give permission to the Secretary of State to withhold sensitive material where it considers that disclosure of that material would be contrary to the public interest.

Order of filing and serving material and written submissions

88.29. Subject to any directions given by the court, the parties must file and serve any material and written submissions, and the special advocate must file and serve any written submissions, in the following order—

- (a) the Secretary of State must file with the court any relevant material of which the Secretary of State is aware;
- (b) the Secretary of State must serve on—
 - (i) the relevant party or the relevant party’s legal representative; and
 - (ii) the special advocate (as soon as one is appointed) or those instructing the special advocate,
 any open material;
- (c) the relevant party must file with the court and serve on the Secretary of State and special advocate (if one is appointed) or those instructing the special advocate any written evidence which the relevant party wishes the court to take into account at the hearing;
- (d) the Secretary of State must file with the court any further relevant material;
- (e) the Secretary of State must serve on—
 - (i) the relevant party or the relevant party’s legal representative; and
 - (ii) the special advocate (as soon as one is appointed) or those instructing the special advocate,
 any open material filed with the court under sub-paragraph (d);
- (f) the Secretary of State must serve on the special advocate (if one has been appointed) any closed material;
- (g) the parties and the special advocate (if one has been appointed) must file and serve any written submissions as directed by the court.

(Rules 88.27 and 88.28 will apply where any closed material is filed by the Secretary of State.)

Failure to comply with directions

88.30.—(1) Where a party or the special advocate fails to comply with a direction of the court, the court may serve on that person a notice which states—

- (a) the respect in which that person has failed to comply with the direction;
- (b) a time limit for complying with the direction; and

(c) that the court may proceed to determine the proceedings before it on the material before it if that person fails to comply with the direction within that time limit.

(2) Where a party or the special advocate fails to comply with the direction after such a notice, the court may proceed in accordance with paragraph (1)(c).

Judgments

88.31.—(1) Where the court gives judgment in any proceedings to which this Part applies, it may withhold any, or any part, of its reasons if and to the extent that it is not possible to give those reasons without disclosing information contrary to the public interest.

(2) Where the judgment of the court does not include the full reasons for its decision, the court must serve on the Secretary of State and the special advocate a separate written judgment giving those reasons.

Application by the Secretary of State for reconsideration of decision

88.32.—(1) If the court proposes, in any proceedings to which this Part applies, to serve on a relevant party—

- (a) notice of any order or direction made or given in the absence of the Secretary of State; or
- (b) any written judgment;

then before the court serves any such notice or judgment on the relevant party, it must first serve notice on the Secretary of State of its intention to do so.

(2) The Secretary of State may, within 5 days of being served with notice under paragraph (1), apply to the court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if the Secretary of State considers that—

- (a) the Secretary of State’s compliance with the order or direction; or
- (b) the notification to the relevant party of any matter contained in the judgment, order or direction,

would cause information to be disclosed contrary to the public interest.

(3) Where the Secretary of State makes an application under paragraph (2), the Secretary of State must at the same time serve on the special advocate (if one has been appointed)—

- (a) a copy of the application; and
- (b) a copy of the notice served on the Secretary of State pursuant to paragraph (1).

(4) Rule 88.28 (consideration of Secretary of State’s objection or application), except for paragraphs (6) and (7) of that rule, applies where a special advocate has been appointed and with any necessary modifications to the consideration of an application under paragraph (2) of this rule.

(5) The court must not serve notice or a written judgment on the relevant party as mentioned in paragraph (1) before the time for the Secretary of State or relevant person to make an application under paragraph (2) has expired.

Supply of court documents

88.33. Unless the court otherwise directs, rule 5.4 (Register of Claims), rule 5.4B (supply of documents from court records – a party) and rule 5.4C (supply of court documents – a non-party) do not apply to any proceedings to which this Part applies.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Civil Procedure Rules 1998 (“the CPR”) for the purpose of implementing Chapter 2 of Part 1 of the Counter-Terrorism and Security Act 2015(6) (“the 2015 Act”) by—

- amending rule 1.2 (application by the court of the overriding objective), so that it is subject to rule 88.2 (modification to the overriding objective);
- inserting a new Part 88 containing rules about proceedings in relation to temporary exclusion orders, particularly where sensitive material is in issue and it is necessary to ensure that such material is not disclosed where such disclosure would be contrary to the public interest. This includes modification of the application of other Parts of the CPR for the purposes of those proceedings).

The 2015 Act makes provision, in Chapter 2 of Part 1, to allow the Secretary of State to impose a temporary exclusion order (“TEO”) on an individual if satisfied that five conditions set out in section 2 of the Act are met, in particular that the individual is or has been involved in terrorism-related activity outside the United Kingdom and that it is necessary for purposes connected with protecting the public from a risk of terrorism for a TEO to be imposed on the individual. A TEO requires the individual subject to it not to return to the United Kingdom except in accordance with a permit to return issued by the Secretary of State before the individual began the return or as a result of the individual being deported to the United Kingdom. The prior permission of the court is required to impose a TEO, except in circumstances of particular urgency, in which case the Secretary of State may impose a TEO but must refer the matter to the court immediately after doing so; and the individual on whom a TEO has been imposed may also apply to the court to review the Secretary of State’s decision that the conditions for the TEO were (or any one of them was) met, the decision to impose the TEO, or the decision to impose conditions (such as reporting conditions, or a condition of informing the police of any change of address) on an individual after return.

Section I of Part 88 contains rules about the scope, interpretation and application of the Part. Rule 88.2 modifies the overriding objective for the purposes of Part 88 by placing a duty on the court to ensure that information is not disclosed where such disclosure would be 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. This, and the rest of Part 88, is, however, subject to paragraph 5(1) of Schedule 3 to the 2015 Act, which provides that nothing in the relevant provisions of the 2015 Act or in rules made by virtue of them is to be read as requiring the court to act in a manner inconsistent with Article 6 of the European Convention on Human Rights.

Section II of Part 88 contains rules about—

- applications by the Secretary of State to impose TEOs;
- references of TEOs imposed by the Secretary of State without permission; and
- applications for review of the decision to impose a TEO or of other decisions relating to a TEO.

Section III of Part 88 contains rules about appeals to the Court of Appeal from decisions of the High Court in proceedings to which Section II applies.

Section IV of Part 88 contains general provisions applying to all proceedings to which Part 88 applies. These include provision for—

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- applications for an order requiring anonymity for an individual on whom a TEO has been or is to be imposed (rule 88.18);
- hearings (rules 88.19 to 88.21);
- notifying the Attorney General of proceedings, the appointment and functions of a special advocate and the special advocate's communications with others (rules 88.22 to 88.24);
- modification of the general rules of evidence and disclosure (rule 88.25);
- the filing and service of relevant material by the Secretary of State (rule 88.26);
- applications by the Secretary of State to withhold closed material from a relevant party and consideration of such applications and objections to proposed communications by the special advocate with the relevant party (rules 88.27 and 88.28);
- the order in which the filing and service of material and submissions must take place, and directions of the court (rules 88.29 and 88.30);
- the court to withhold (so that they are given only to the Secretary of State and special advocate, but not to the relevant party) any, or any part, of its reasons when giving judgment, if it is not possible to give reasons without disclosing information in a way which would be contrary to the public interest (rule 88.31);
- applications by the Secretary of State for the court to reconsider the terms of any order or decision given in the Secretary of State's absence, or the terms of any judgment, to prevent the disclosure of information in a way which would be contrary to the public interest (rule 88.32).