

FINANCIAL RESTRICTIONS PROCEEDINGS UNDER THE COUNTER-TERRORISM ACT 2008

PART 79

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I APPLICATION OF THIS PART

79.1 Scope and interpretation

- (1) This Part contains rules about –
 - (a) financial restrictions 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 Act 2008¹;
 - (b) ‘financial restrictions decision’ means a decision to which section 63(1) of the Act applies;
 - (c) ‘financial restrictions proceedings’ has the same meaning as in section 65 of the Act;
 - (d) ‘closed material’ means –
 - (i) material, evidence or submissions to the court upon which the Treasury wish to rely in proceedings;
 - (ii) material which adversely affects the Treasury’s case or supports another party’s case; or
 - (iii) information which the Treasury are required to file pursuant to an order under rule 79.11(7),
but which the Treasury object to disclosing to another party and that party’s legal representative;
 - (e) ‘legal representative’ in relation to a party to proceedings other than the Treasury does not include a special advocate;
 - (f) ‘material’ means anything in which information of any description is recorded;
 - (g) ‘party’ includes the Treasury unless otherwise stated or unless the context otherwise requires;
 - (h) ‘special advocate’ means a person appointed under section 68 of the Act; and
 - (i) ‘specially represented party’ means a party, other than the Treasury, whose interests a special advocate represents.

79.2 Modification to the overriding objective

- (1) Where this Part applies, the overriding objective in Part 1, and so far as relevant 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 will ensure that information is not disclosed contrary to the public interest.
- (3) Without prejudice to paragraph (2), the court will satisfy itself that the material available to it enables it properly to determine the proceedings.

II APPLICATION TO SET ASIDE A FINANCIAL RESTRICTIONS DECISION

79.3 Scope of this Section

This Section applies to an application to set aside a financial restrictions decision.

¹ 2008 c.28.

79.4 Where to make an application

An application under this Section must be started and heard in the Administrative Court.

79.5 Applications (general) and modification of Part 8

- (1) An application to set aside a financial restrictions decision 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 an application under this Section –
 - (a) rule 8.1(3);
 - (b) rule 8.2A (issue of claim form without naming defendants);
 - (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).

79.6 Application to set aside

- (1) An application to set aside a financial restrictions decision must be started by a claim form.
- (2) The claim form must set out –
 - (a) the details of the financial restrictions decision;
 - (b) details of how the claimant is affected by the financial restrictions decision; and
 - (c) the grounds on which the claimant seeks to set aside the decision.
- (3) The claimant must file with the claim form –
 - (a) a copy of –
 - (i) the written notice of the relevant financial restrictions decision made by the Treasury; or
 - (ii) where relevant, any direction, order or licence made under Schedule 7 to the Act or any freezing order made under Part 2 of the Anti-terrorism, Crime and Security Act 2001¹; and
 - (b) any evidence, including witness statements, on which the claimant relies at that stage.

79.7 Fixing of directions hearing date

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

79.8 Service of the claim form and accompanying documents

The court will –

- (a) serve on the Treasury and any special advocate (if one has been appointed) –
 - (i) the claim form; and
 - (ii) the documents specified in rule 79.6(3); and
- (b) send to all parties and any special advocate a notice of the directions hearing date (where such date is not endorsed on the claim form).

¹ 2001 c.24.

79.9 Acknowledgment of service

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

79.10 Directions hearing

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 Treasury under rule 79.11(1), (2) and (4);
 - (ii) any application to be made under rule 79.11(5);
 - (iii) any information to be filed and served by the Treasury pursuant to an order under rule 79.11(7);
 - (iv) any evidence to be filed and served by the claimant under rule 79.12(1);
 - (v) any evidence to be filed and served by the Treasury under rule 79.12(2);
 - (vi) any application by the Treasury under rule 79.11(3), 79.11(8) or 79.12(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.

79.11 Response by the Treasury

- (1) Where the Treasury intend to oppose the application to set aside the financial restrictions decision, they must file with the court –
 - (a) the grounds for contesting the application; and
 - (b) any relevant evidence of which they are aware at that stage.
- (2) Unless the Treasury object to the grounds and evidence in paragraph (1) being disclosed to the claimant and the claimant's legal representative, the Treasury must serve a copy of the grounds and evidence on the claimant at the same time as filing the grounds.
- (3) Where the Treasury object to the grounds and evidence in paragraph (1) being disclosed to the claimant and the claimant's legal representative, the Treasury must make an application in accordance with rule 79.25.
- (4) Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the grounds and evidence filed under paragraph (1).
- (5) The claimant and any special advocate may apply to the court for an order directing the Treasury to file and serve further information about the Treasury's grounds filed under paragraph (1)(a).
- (6) The 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 application to set aside the financial restrictions decision.
- (7) The court may make an order on an application under paragraph (5) where it considers that the information sought is –

- (a) necessary for the determination of the application to set aside the financial restrictions decision; and
 - (b) may be provided without disproportionate cost, time or effort.
- (8) Where the Treasury object to serving on the claimant and the claimant's legal representative the information sought under paragraph (5), the Treasury must make an application in accordance with rule 79.25.

79.12 Filing and service of evidence

- (1) Where the claimant wishes to rely on evidence in support of the application to set aside the financial restrictions decision 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 claimant wishes to rely on further evidence,

the claimant must file and serve that evidence, including any witness statement, on the Treasury and any special advocate.
- (2) Where the claimant serves evidence in support of the application, the Treasury must file and serve, subject to paragraph (3), any further evidence, including any witness statement, on the claimant and any special advocate.
- (3) Where the Treasury seek to withhold disclosure of any closed material from the claimant and the claimant's legal representative, the Treasury must make an application in accordance with rule 79.25.
- (4) The Treasury must serve any closed material upon 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.

III APPEAL TO THE COURT OF APPEAL

79.13 Modification of Part 52 (appeals)

Part 52 (appeals) applies to an appeal to the Court of Appeal against an order of the High Court in financial restrictions proceedings, subject to –

- (a) rule 79.2; and
- (b) Section 4 of this Part.

79.14 Service of appellant's notice on special advocate

The appellant must serve a copy of the appellant's notice on any special advocate.

IV GENERAL PROVISIONS

79.15 Scope of this Section

This Section applies to all proceedings specified in rule 79.1(1).

79.16 Notification of hearing

Unless the court orders otherwise, the court will serve any notice of the date, time and place fixed for a hearing on –

- (a) every party, whether or not a party is entitled to attend that hearing; and
- (b) if one has been appointed for the purposes of the proceedings, the special advocate or those instructing the special advocate.

79.17 Hearings

- (1) All proceedings to which this Part applies must be determined at a hearing except where –
 - (a) the claimant withdraws the claim or application;
 - (b) the Treasury consent to the claim or application being allowed;
 - (c) the appellant withdraws the appeal against a decision of the High Court;
 - (d) the respondent to the appeal consents to the appeal being allowed; or
 - (e) the parties agree to a determination without a hearing.
- (2) Where the court considers it necessary for a party other than the Treasury and that party's legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, the court will –
 - (a) direct accordingly; and
 - (b) conduct the hearing, or that part of it from which the 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.

79.18 Appointment of a special advocate

- (1) Subject to paragraph (2), the Treasury must immediately give notice of the proceedings to the Attorney General –
 - (a) upon being served with any claim form, application notice or appeal notice; or
 - (b) where the Treasury intend to file an appeal notice, in proceedings to which this Part applies.
- (2) Paragraph (1) applies unless –
 - (a) the Treasury do not intend to –
 - (i) oppose the claim, application or appeal; or
 - (ii) apply for permission to withhold closed material from a party and that party's legal representative; or
 - (b) a special advocate has already been appointed to represent the interests of a party other than the Treasury and that special advocate is not prevented from communicating with that party by virtue of rule 79.20.
- (3) Where any proceedings to which this Part applies are pending but no special advocate has been appointed, any party may request the Attorney General to appoint a special advocate.

79.19 Function of a special advocate

The function of a special advocate is to represent the interests of a party other than the Treasury by, for example –

- (a) making submissions to the court at any hearing from which the party and that party's legal representative are excluded;
- (b) adducing evidence and cross-examining witnesses at such a hearing;

- (c) making applications to the court or seeking directions from the court where necessary; and
- (d) making written submissions to the court.

79.20 Special advocate: communicating about proceedings

- (1) The special advocate may communicate with the specially represented party or that party's legal representative at any time before the Treasury serve closed material on the special advocate.
- (2) After the Treasury serve 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 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 Treasury and any persons acting for them;
 - (c) the Attorney General and any persons acting for the Attorney General; and
 - (d) any other person, except for –
 - (i) the specially represented party and that party's legal representative; and
 - (ii) any other party to the proceedings (other than the Treasury) and that 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 specially represented party or that 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 will notify the Treasury of the request; and
 - (b) the Treasury must, within a period specified by the court, file and serve on the special advocate notice of any objection which they have to the proposed communication, or to the form in which it is proposed to be made.
- (6) Paragraph (2) does not prohibit the specially represented party from communicating with the special advocate after the Treasury have served closed material on the special advocate as mentioned in paragraph (1), but –
 - (a) that party may only communicate with the special advocate through a legal representative in writing; and
 - (b) the special advocate must not reply to the communication other than in accordance with directions given by the court, except that the special advocate may without such directions send a written acknowledgment of receipt to the specially represented party's legal representative.

79.21 Consideration of the Treasury's objection

- (1) Where the Treasury object under rule 79.20(5)(b) to a proposed communication by the special advocate the court will fix a hearing for the Treasury and the special advocate to make oral representations, unless –
 - (a) the special advocate gives notice to the court that the special advocate does not challenge the objection;
 - (b) the court –

- (i) has previously considered an objection under rule 79.20(5)(b) to the same or substantially the same communication; and
 - (ii) is satisfied that it would be just to uphold or dismiss that objection without a hearing; or
- (c) the Treasury and the special advocate consent to the court deciding the issue without a hearing.
- (2) If the special advocate does not challenge the objection, the special advocate must give notice of that fact to the court and to the Treasury –
 - (a) within 14 days after the Treasury serve on the special advocate a notice under rule 79.20(5)(b); or
 - (b) within such other period as the court may direct.
- (3) Where the court fixes a hearing under paragraph (1) –
 - (a) the special advocate may file with the court and serve on the Treasury a reply to the Treasury's objection;
 - (b) the Treasury may file with the court and serve on the special advocate a response to the special advocate's reply; and
 - (c) the Treasury and the special advocate must file with the court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must –
 - (i) give brief reasons for their contentions on each issue in dispute; and
 - (ii) set out any proposals for the court to resolve the issues in dispute.
- (4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.

79.22 Modification of the general rules of evidence and disclosure

- (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 and to any directions of the court, the evidence of a witness may be given either –
 - (a) orally before the court; or
 - (b) in a witness statement.
- (3) The court may also receive evidence in documentary or any other form.
- (4) A party is entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which a party and that party's legal representative are not excluded.
- (5) The court may require a witness to give evidence on oath or by affirmation.

79.23 Search for, filing of and service of material

- (1) A party (the disclosing party) must –
 - (a) make a reasonable search for material relevant to the matters under consideration in the proceedings to which this Part applies; and
 - (b) file and serve on the other party and any special advocate material other than closed material –
 - (i) on which the disclosing party relies;
 - (ii) which adversely affects the disclosing party's case;
 - (ii) which adversely affects the other party's case; or
 - (iv) which supports the other party's case.

- (2) The factors relevant in deciding the reasonableness of a search under paragraph (1)(a) include –
 - (a) the amount of material involved;
 - (b) the nature and complexity of the proceedings;
 - (c) whether the material is in the control of the party making the search;
 - (d) the ease and expense of retrieval of any material; and
 - (e) the significance of any material which is likely to be located during the search.
- (3) The duty to search for, file and serve material under paragraph (1) continues until the proceedings to which this Part applies have been determined.
- (4) Where material, other than closed material, to which the duty under paragraph (1) extends comes to a party's attention before the proceedings to which this Part applies have been determined, that party must immediately –
 - (a) file it with the court;
 - (b) serve it on the other party; and
 - (c) serve it on any special advocate.

79.24 Redacted material

Where the Treasury serve on another party any evidence (including a witness statement) or material which has been redacted on grounds other than those of legal professional privilege, the Treasury must –

- (a) notify the party that the evidence or material has been redacted and on what grounds it has been redacted;
- (b) file the evidence or material with the court in an unredacted form together with an explanation of the redaction.

79.25 Application to withhold closed material

- (1) The Treasury –
 - (a) must apply to the court for permission to withhold closed material from another party and that party's legal representative in accordance with this rule; and
 - (b) may not rely on closed material at a hearing unless a special advocate has been appointed and attends the hearing to represent the interests of that party.
- (2) The Treasury must file with the court and serve, at such time as the court directs, on the special advocate –
 - (a) the closed material;
 - (b) a statement of the reasons for withholding that material from the specially represented party; and
 - (c) if the Treasury consider it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the specially represented party or that party's legal representative.
- (3) Where the Treasury serve on the special advocate any closed material which has been redacted on grounds other than those of legal professional privilege –
 - (a) the Treasury must file with the court the material in an unredacted form together with an explanation of the redactions; and
 - (b) the court will give a direction to the Treasury as to what may be redacted and what, if any, must be served on the special advocate in an unredacted form.

- (4) The Treasury 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.

79.26 Consideration of the Treasury's application

- (1) Where the Treasury apply in accordance with rule 79.25 for permission to withhold closed material the court will fix a hearing for the Treasury and the special advocate to make oral representations, unless –
 - (a) the special advocate gives notice to the court that the special advocate does not challenge the application;
 - (b) the court –
 - (i) has previously considered an application for permission to withhold the same or substantially the same material; and
 - (ii) is satisfied that it would be just to give permission without a hearing; or
 - (c) the Treasury and the special advocate consent to the court deciding the issue without a hearing.
- (2) If the special advocate does not challenge the application, the special advocate must give notice of that fact to the court and to the Treasury –
 - (a) within 14 days after the Treasury serve on the special advocate the material under rule 79.25(2); or
 - (b) within such other period as the court may direct.
- (3) Where the court fixes a hearing under paragraph (1) –
 - (a) the special advocate may file with the court and serve on the Treasury a reply to the Treasury's application;
 - (b) the Treasury may file with the court and serve on the special advocate a response to the special advocate's reply; and
 - (c) the Treasury and the special advocate must file with the court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must –
 - (i) give brief reasons for their contentions on each issue in dispute; and
 - (ii) set out any proposals for the court to resolve the issues in dispute.
- (4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.
- (5) The court will give permission to the Treasury to withhold closed material where it considers that disclosure of that material would be contrary to the public interest.
- (6) Where the court gives permission to the Treasury to withhold closed material, the court will –
 - (a) consider whether to direct the Treasury to serve a summary of that material on the specially represented party or that party's legal representative; but
 - (b) ensure that such a summary does not contain material, the disclosure of which would be contrary to the public interest.
- (7) Where the court does not give permission to the Treasury to withhold closed material from, or directs the Treasury to serve a summary of that material on, the specially represented party or that party's legal representative –
 - (a) the Treasury are not required to serve that material or summary; but
 - (b) if they do not do so, at a hearing on notice, the court may –

- (i) where it considers that the material or anything that is required to be summarised might adversely affect the Treasury's case or supports the case of the specially represented party, direct that the Treasury must not rely on such material in their case, or must make such concessions or take such other steps, as the court may specify; or
- (ii) in any other case, direct that the Treasury do not rely on the material or (as the case may be) on that which is required to be summarised.

79.27 Failure to comply with directions

- (1) Where a party or special advocate fails to comply with a direction of the court, the court may serve on that party or the special advocate a notice which states –
 - (a) the respect in which that party or special advocate 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 available to it, if the party or special advocate fails to comply with the relevant direction within the time specified.
- (2) Where a party or special advocate fails to comply with such a notice, the court may proceed in accordance with paragraph (1)(c).

79.28 Judgments

- (1) When the court gives judgment in any proceedings to which this Part applies, it may withhold all or some of its reasons if and to the extent that it is not possible to give 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 will serve on the Treasury and the special advocate a separate written judgment including those reasons.
- (3) Where the court serves a separate written judgment under paragraph (2), the special advocate may apply to the court to amend that judgment and the judgment under paragraph (1) on the grounds that the separate written judgment under paragraph (2) contains material not in the judgment under paragraph (1) the disclosure of which would not be contrary to the public interest.
- (4) The special advocate must serve a copy of the application under paragraph (3) on the Treasury.
- (5) The court will give the special advocate and the Treasury an opportunity to file written submissions and may determine the application with or without a hearing.

79.29 Application by Treasury for reconsideration of order, direction or judgment

- (1) This rule applies where the court proposes, in any proceedings to which this Part applies, to serve on a party other than the Treasury –
 - (a) notice of any order or direction made or given in the absence of the Treasury; or
 - (b) any written judgment.
- (2) Before the court serves any such notice or judgment on a party other than the Treasury, it will first serve notice on the Treasury of its intention to do so.

- (3) The Treasury may, within 5 days of being served with notice under paragraph (2), apply to the court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if they consider –
 - (a) their compliance with the order or direction; or
 - (b) the notification to another party of any matter contained in the judgment, order or direction, would cause information to be disclosed contrary to the public interest.
- (4) Where the Treasury make an application under paragraph (3), they must at the same time serve on a special advocate, if one has been appointed –
 - (a) a copy of the application;
 - (b) a copy of the relevant document referred to in paragraph (1)(a) or (b); and
 - (c) a copy of the notice served on the Treasury pursuant to paragraph (2).
- (5) If a special advocate has been appointed, rule 79.26 (except for paragraphs (6) and (7)) will apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.
- (6) The court will not serve notice on a party other than the Treasury as mentioned in paragraph (1) before the time for the Treasury to make an application under paragraph (3) has expired.

79.30 Supply of court documents

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