

**Lord Chancellor's Direction**  
**Direction 4 – Prevention of Terrorism Act 2005**  
**Control Order Proceedings**

1. This is a Direction by the Lord Chancellor under Article 12(8)(a) of the Access to Justice (Northern Ireland) Order 2003 (the '2003 Order'). It relates to applications for civil legal aid under Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (the '1981 Order') for specific proceedings under the Prevention of Terrorism Act 2005 (the 'Act'), and directs the Northern Ireland Legal Services Commission (the 'Commission') as to how those proceedings should be funded.
2. In respect of applications for civil legal aid for or relating to control order proceedings, the Lord Chancellor requires the Commission to disapply the financial eligibility criteria prescribed in or under Part II of the 1981 Order and fund, without charge, such applications. In addition, the merits test prescribed by Article 10(4) of the 1981 Order shall be disapplied and such applications will be subject to assessment under paragraph 3.
3. Subject to paragraph 2, the Commission shall only fund applications where the Commission is satisfied that it is in the interests of justice to grant that funding. In considering whether it is in the interests of justice, the Commission shall take into account:
  - 3.1 the importance of the issues to the applicant; that is, how seriously the applicant will be affected by the court making or not making the order in question,
  - 3.2 whether there are complex legal and factual issues that could not fairly be determined without legal representation for the applicant,
  - 3.3 whether the applicant suffers from any lack of understanding of the issues, including any language problem or disability,
  - 3.4 whether the case requires extensive legal preparation, for example in the tracing of witnesses or advocacy skills
4. Subject to the foregoing paragraphs, applications under this Direction remain subject to the provisions of Part II of the 1981 Order.
5. In this Direction, "control order proceedings" has the meaning assigned by section 11(6) of the Act.

6. The Commission shall publish this direction as required by Article 46(3) of the Access to Justice (Northern Ireland) Order 2003.

Signed by authority of the Lord Chancellor

*Cath M. Allen*

Parliamentary Under-Secretary of State,  
Department for Constitutional Affairs

Dated:

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page*

# FUNDING IN RELATION TO CONTROL ORDERS UNDER THE PREVENTION OF TERRORISM ACT 2005

The Prevention of Terrorism Act provides for the making of 'control orders' that impose obligations on individuals suspected of involvement in terrorism-related activity. Control orders may impose any obligations necessary for purposes connected with preventing or restricting an individual's further involvement in terrorism-related activity. Obligations that may be imposed include, for example, prohibitions on the possession or use of certain items, restrictions on movement to or within certain areas, restrictions on communications and associations, and requirements as to place of abode. It will be possible to make control orders against any individuals engaged in terrorism-related activity, irrespective of nationality.

Control orders that do not seek to impose obligations that are incompatible with the individual's right to liberty under Article 5 of the Human Rights Convention (non-derogating orders) will be made by the Secretary of State with the permission of the court, or without their permission, if there is some urgency in the particular case. If the Secretary of State makes a non-derogating order without the permission of the court, he must immediately refer the order to the court and the court must consider the case within 7 days.

Control orders that impose obligations that are incompatible with the individual's right to liberty under Article 5 of the Human Rights Convention (derogating orders) must be made by the Court on the application of the Secretary of State. Upon receipt of an application from the Secretary of State the court must immediately hold a preliminary hearing to determine whether to impose such an order. If the court does make such an order, it must then give directions for the holding of a full hearing to determine whether to confirm the order.

All proceedings under the Act are in scope of civil funding, subject to the normal CLS criteria for scope and merits. However, the Commission will apply the General Funding Code criteria in a way consistent with the nature of the proceedings. As with, for example

civil recovery under the Proceeds of Crime Act 2002, the Commission will apply the Funding Code Criteria so as to ensure that representation is available where it is in the 'interests of justice' for the client to be represented.

Regulations have now been made which provide that Legal Help and Legal Representation for a person who is subject to a control order, is available on a non-means tested basis in respect of proceedings under the Act. The Community Legal Service (Financial) (Amendment No 2) Regulations 2005 came into force on 5 April 2005.

## **Process to be followed with applications for funding under the Act**

All applications for funding, or notifications of grant of emergency funding under devolved powers will be dealt with by the Special Cases Unit and should be sent to:

John Baker Senior Case Manager  
Special Cases Unit, Legal Services Commission,  
29-37 Red Lion Street, London WC1R 4PP

DX 170 London Chancery Lane  
Tel 020 7759 1561 Fax 020 7759 1588

No means form need be provided.

Where the anticipated costs to the end of the case are likely to exceed £25,000, the solicitors will be required to provide a caseplan for the future conduct of the case and enter a contract with the Commission.

## **United Nations restrictions on the availability of legal aid**

The Security Council, pursuant to United Nations Security Council Resolution 1390, maintains a list of individuals suspected of being linked to Al-Qa'ida or the Taliban. The Al-Qa'ida and Taliban (United Nations Measures) Order 2002 (No.111) provides that it is an offence to make funds available to people on that list without authorisation. Any individual on the list is therefore prevented from receiving any form of legal aid (including Legal Help and emergency representation) without first obtaining the necessary authorisation. In the United Kingdom, HM Treasury is the authorising authority. The Commission is in discussions with the government with a view to expediting the obtaining of authorisations to ensure that proceedings under the Prevention of Terrorism Act are not delayed, should this issue arise. In the meantime, it is imperative that applicants for CLS funding who are on this list apply early to HM Treasury for an authorisation in order that funding can be made available to them. It is the applicant's responsibility to obtain this authorisation. For further information as to the procedures for obtaining a licence, applicants should contact the International Financial Services Team at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ, tel: 020 7270 5550.

# Prevention of Terrorism Act 2005

Royal Arms

## 2005 Chapter 2

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# Prevention of Terrorism Act 2005

## 2005 Chapter 2



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Prepared 11 March 2005

# Prevention of Terrorism Act 2005

## 2005 Chapter 2 - *continued*

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An Act to provide for the making against individuals involved in terrorism-related activity of orders imposing obligations on them for purposes connected with preventing or restricting their further involvement in such activity; to make provision about appeals and other proceedings relating to such orders; and for connected purposes.

[11th March 2005]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

### *Control orders*

#### **1 Power to make control orders**

(1) In this Act "control order" means an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism.

(2) The power to make a control order against an individual shall be exercisable-

(a) except in the case of an order imposing obligations that are incompatible with the individual's right to liberty under Article 5 of the Human Rights Convention, by the Secretary of State; and

(b) in the case of an order imposing obligations that are or include derogating obligations, by the court on an application by the Secretary of State.

(3) The obligations that may be imposed by a control order made against an individual are any obligations that the Secretary of State or (as the case may be) the court considers necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity.

(4) Those obligations may include, in particular-

(a) a prohibition or restriction on his possession or use of specified articles or substances;

(b) a prohibition or restriction on his use of specified services or specified facilities, or on his carrying on specified activities;

(c) a restriction in respect of his work or other occupation, or in respect of his business;

(d) a restriction on his association or communications with specified persons or with other persons generally;

(e) a restriction in respect of his place of residence or on the persons to whom he gives access to his place of residence;

(f) a prohibition on his being at specified places or within a specified area at specified times or on specified days;

(g) a prohibition or restriction on his movements to, from or within the United Kingdom, a specified part of the United Kingdom or a specified place or area within the United Kingdom;

(h) a requirement on him to comply with such other prohibitions or restrictions on his movements as may be imposed, for a period not exceeding 24 hours, by directions given to him in the specified manner, by a specified person and for the purpose of securing compliance with other obligations imposed by or under the order;

(i) a requirement on him to surrender his passport, or anything in his possession to which a prohibition or restriction imposed by the order relates, to a specified person for a period not exceeding the period for which the order remains in force;

(j) a requirement on him to give access to specified persons to his place of residence or to other premises to which he has power to grant access;

(k) a requirement on him to allow specified persons to search that place or any such premises for the purpose of ascertaining whether obligations imposed by or under the order have been, are being or are about to be contravened;

(l) a requirement on him to allow specified persons, either for that purpose or for the purpose of securing that the order is complied with, to remove anything found in that place or on any such premises and to subject it to tests or to retain it for a period not exceeding the period for which the order remains in force;

(m) a requirement on him to allow himself to be photographed;

(n) a requirement on him to co-operate with specified arrangements for enabling his movements, communications or other activities to be monitored by electronic or other means;

(o) a requirement on him to comply with a demand made in the specified manner to provide information to a specified person in accordance with the demand;

(p) a requirement on him to report to a specified person at specified times and places.

(5) Power by or under a control order to prohibit or restrict the controlled person's movements includes, in particular, power to impose a requirement on him to remain at or within a particular place or area (whether for a particular period or at particular times or generally).

(6) The reference in subsection (4)(n) to co-operating with specified arrangements for monitoring includes a reference to each of the following-

- (a) submitting to procedures required by the arrangements;
- (b) wearing or otherwise using apparatus approved by or in accordance with the arrangements;
- (c) maintaining such apparatus in the specified manner;
- (d) complying with directions given by persons carrying out functions for the purposes of those arrangements.

(7) The information that the controlled person may be required to provide under a control order includes, in particular, advance information about his proposed movements or other activities.

(8) A control order may provide for a prohibition, restriction or requirement imposed by or under the order to apply only where a specified person has not given his consent or approval to what would otherwise contravene the prohibition, restriction or requirement.

(9) For the purposes of this Act involvement in terrorism-related activity is any one or more of the following-

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
- (c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so;
- (d) conduct which gives support or assistance to individuals who are known or believed to be involved in terrorism-related activity;

and for the purposes of this subsection it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.

(10) In this Act-

"derogating obligation" means an obligation on an individual which-

(a) is incompatible with his right to liberty under Article 5 of the Human Rights Convention; but

(b) is of a description of obligations which, for the purposes of the designation of a designated derogation, is set out in the designation order;

"designated derogation" has the same meaning as in the Human Rights Act 1998 (c. 42) (see section 14(1) of that Act);

"designation order", in relation to a designated derogation, means the order under section 14(1) of the Human Rights Act 1998 by which the derogation is designated.

## **2 Making of non-derogating control orders**

(1) The Secretary of State may make a control order against an individual if he-

(a) has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity; and

(b) considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, to make a control order imposing obligations on that individual.

(2) The Secretary of State may make a control order against an individual who is for the time being bound by a control order made by the court only if he does so-

(a) after the court has determined that its order should be revoked; but

(b) while the effect of the revocation has been postponed for the purpose of giving the Secretary of State an opportunity to decide whether to exercise his own powers to make a control order against the individual.

(3) A control order made by the Secretary of State is called a non-derogating control order.

(4) A non-derogating control order-

(a) has effect for a period of 12 months beginning with the day on which it is made; but

(b) may be renewed on one or more occasions in accordance with this section.

(5) A non-derogating control order must specify when the period for which it is to have effect will end.

(6) The Secretary of State may renew a non-derogating control order (with or without modifications) for a period of 12 months if he-

(a) considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for an order imposing obligations on the controlled person to continue in force; and

(b) considers that the obligations to be imposed by the renewed order are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity.

(7) Where the Secretary of State renews a non-derogating control order, the 12 month period of the renewal begins to run from whichever is the earlier of-

(a) the time when the order would otherwise have ceased to have effect; or

(b) the beginning of the seventh day after the date of renewal.

(8) The instrument renewing a non-derogating control order must specify when the period for which it is renewed will end.

(9) It shall be immaterial, for the purposes of determining what obligations may be imposed by a control order made by the Secretary of State, whether the involvement in terrorism-related activity to be prevented or restricted by the obligations is connected with matters to which the Secretary of State's grounds for suspicion relate.

### **3 Supervision by court of making of non-derogating control orders**

(1) The Secretary of State must not make a non-derogating control order against an individual except where-

(a) having decided that there are grounds to make such an order against that individual, he has applied to the court for permission to make the order and has been granted that permission;

(b) the order contains a statement by the Secretary of State that, in his opinion, the urgency of the case requires the order to be made without such permission; or

(c) the order is made before 14th March 2005 against an individual who, at the time it is made, is an individual in respect of whom a certificate under section 21(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) is in force.

(2) Where the Secretary of State makes an application for permission to make a non-derogating control order against an individual, the application must set out the order for which he seeks permission and-

(a) the function of the court is to consider whether the Secretary of State's decision that there are grounds to make that order is obviously flawed;

(b) the court may give that permission unless it determines that the decision is obviously flawed; and

(c) if it gives permission, the court must give directions for a hearing in relation to the order as soon as reasonably practicable after it is made.

(3) Where the Secretary of State makes a non-derogating control order against an individual without the permission of the court-

(a) he must immediately refer the order to the court; and

(b) the function of the court on the reference is to consider whether the decision of the Secretary of State to make the order he did was obviously flawed.

(4) The court's consideration on a reference under subsection (3)(a) must begin no more than 7 days after the day on which the control order in question was made.

(5) The court may consider an application for permission under subsection (1)(a) or a reference under subsection (3)(a)-

(a) in the absence of the individual in question;

(b) without his having been notified of the application or reference; and

(c) without his having been given an opportunity (if he was aware of the application or reference) of making any representations to the court;

but this subsection is not to be construed as limiting the matters about which rules of court may be made in relation to the consideration of such an application or reference.

(6) On a reference under subsection (3)(a), the court-

(a) if it determines that the decision of the Secretary of State to make a non-derogating control order against the controlled person was obviously flawed, must quash the order;

(b) if it determines that that decision was not obviously flawed but that a decision of the Secretary of State to impose a particular obligation by that order was obviously flawed, must quash that obligation and (subject to that) confirm the order and give directions for a hearing in relation to the confirmed order; and

(c) in any other case, must confirm the order and give directions for a hearing in relation to the confirmed order.

(7) The directions given under subsection (2)(c) or (6)(b) or (c) must include arrangements for the individual in question to be given an opportunity within 7 days of the court's giving permission or (as the case may be) making its determination on the reference to make representations about-

(a) the directions already given; and

(b) the making of further directions.

(8) On a reference under subsection (3)(a), the court may quash a certificate contained in the order for the purposes of subsection (1)(b) if it determines that the Secretary of State's decision that the certificate should be contained in the order was flawed.

(9) The court must ensure that the controlled person is notified of its decision on a reference under subsection (3)(a).

(10) On a hearing in pursuance of directions under subsection (2)(c) or (6)(b) or (c), the function of the court is to determine whether any of the following decisions of the Secretary of State was flawed-

(a) his decision that the requirements of section 2(1)(a) and (b) were satisfied for the making of the order; and

(b) his decisions on the imposition of each of the obligations imposed by the order.

(11) In determining-

(a) what constitutes a flawed decision for the purposes of subsection (2), (6) or (8), or

(b) the matters mentioned in subsection (10),

the court must apply the principles applicable on an application for judicial review.

(12) If the court determines, on a hearing in pursuance of directions under subsection (2)(c) or (6)(b) or (c), that a decision of the Secretary of State was flawed, its only powers are-

(a) power to quash the order;

(b) power to quash one or more obligations imposed by the order; and

(c) power to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes.

(13) In every other case the court must decide that the control order is to continue in force.

(14) If requested to do so by the controlled person, the court must discontinue any hearing in pursuance of directions under subsection (2)(c) or (6)(b) or (c).

#### **4 Power of court to make derogating control orders**

(1) On an application to the court by the Secretary of State for the making of a control order against an individual, it shall be the duty of the court-

(a) to hold an immediate preliminary hearing to determine whether to make a control order imposing obligations that are or include derogating obligations (called a "derogating control order") against that individual; and

(b) if it does make such an order against that individual, to give directions for the holding of a full hearing to determine whether to confirm the order (with or without modifications).

(2) The preliminary hearing under subsection (1)(a) may be held-

(a) in the absence of the individual in question;

(b) without his having had notice of the application for the order; and

(c) without his having been given an opportunity (if he was aware of the application) of making any representations to the court;

but this subsection is not to be construed as limiting the matters about which rules of court may be made in relation to that hearing.

(3) At the preliminary hearing, the court may make a control order against the individual in question if it appears to the court-

(a) that there is material which (if not disproved) is capable of being relied on by the court as establishing that the individual is or has been involved in terrorism-related activity;

(b) that there are reasonable grounds for believing that the imposition of obligations on that individual is necessary for purposes connected with protecting members of the public from a risk of terrorism;

(c) that the risk arises out of, or is associated with, a public emergency in respect of which there is a designated derogation from the whole or a part of Article 5 of the Human Rights Convention; and

(d) that the obligations that there are reasonable grounds for believing should be imposed on the individual are or include derogating obligations of a description set out for the purposes of the designated derogation in the designation order.

(4) The obligations that may be imposed by a derogating control order in the period between-

(a) the time when the order is made, and

(b) the time when a final determination is made by the court whether to confirm it,

include any obligations which the court has reasonable grounds for considering are necessary as mentioned in section 1(3).

(5) At the full hearing under subsection (1)(b), the court may-

(a) confirm the control order made by the court; or

(b) revoke the order;

and where the court revokes the order, it may (if it thinks fit) direct that this Act is to have effect as if the order had been quashed.

(6) In confirming a control order, the court-

(a) may modify the obligations imposed by the order; and

(b) where a modification made by the court removes an obligation, may (if it thinks fit) direct that this Act is to have effect as if the removed obligation had been quashed.

(7) At the full hearing, the court may confirm the control order (with or without modifications) only if-

(a) it is satisfied, on the balance of probabilities, that the controlled person is an individual who is or has been involved in terrorism-related activity;

(b) it considers that the imposition of obligations on the controlled person is necessary for purposes connected with protecting members of the public from a risk of terrorism;

(c) it appears to the court that the risk is one arising out of, or is associated with, a public emergency in respect of which there is a designated derogation from the whole or a part of Article 5 of the Human Rights Convention; and

(d) the obligations to be imposed by the order or (as the case may be) by the order as modified are or include derogating obligations of a description set out for the purposes of the designated derogation in the designation order.

(8) A derogating control order ceases to have effect at the end of the period of 6 months beginning with the day on which it is made unless-

(a) it is previously revoked (whether at the hearing under subsection (1)(b) or otherwise under this Act);

(b) it ceases to have effect under section 6; or

(c) it is renewed.

(9) The court, on an application by the Secretary of State, may renew a derogating control order (with or without modifications) for a period of 6 months from whichever is the earlier of-

(a) the time when the order would otherwise have ceased to have effect; and

(b) the beginning of the seventh day after the date of renewal.

(10) The power of the court to renew a derogating control order is exercisable on as many occasions as the court thinks fit; but, on each occasion, it is exercisable only if-

(a) the court considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for a derogating control order to continue in force against the controlled person;

(b) it appears to the court that the risk is one arising out of, or is associated with, a public emergency in respect of which there is a designated derogation from the whole or a part of Article 5 of the Human Rights Convention;

(c) the derogating obligations that the court considers should continue in force are of a description that continues to be set out for the purposes of the designated derogation in the designation order; and

(d) the court considers that the obligations to be imposed by the renewed order are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity.

(11) Where, on an application for the renewal of a derogating control order, it appears to the court-

(a) that the proceedings on the application are unlikely to be completed before the time when the order is due to cease to have effect if not renewed, and

(b) that that is not attributable to an unreasonable delay on the part of the Secretary of State in the making or conduct of the application,

the court may (on one or more occasions) extend the period for which the order is to remain in force for the purpose of keeping it in force until the conclusion of the proceedings.

(12) Where the court exercises its power under subsection (11) and subsequently renews the control order in question, the period of any renewal still runs from the time when the order would have ceased to have effect apart from that subsection.

(13) It shall be immaterial, for the purposes of determining what obligations may be imposed by a control order made by the court, whether the involvement in terrorism-related activity to be prevented or restricted by the obligations is connected with matters in relation to which the requirements of subsection (3)(a) or (7)(a) were satisfied.

## **5 Arrest and detention pending derogating control order**

(1) A constable may arrest and detain an individual if-

(a) the Secretary of State has made an application to the court for a derogating control order to be made against that individual; and

(b) the constable considers that the individual's arrest and detention is necessary to ensure that he is available to be given notice of the order if it is made.

(2) A constable who has arrested an individual under this section must take him to the designated place that the constable considers most appropriate as soon as practicable after the arrest.

(3) An individual taken to a designated place under this section may be detained there until the end of 48 hours from the time of his arrest.

(4) If the court considers that it is necessary to do so to ensure that the individual in question is available to be given notice of any derogating control order that is made against him, it may, during the 48 hours following his arrest, extend the period for which the individual may be detained under this section by a period of no more than 48 hours.

(5) An individual may not be detained under this section at any time after-

(a) he has become bound by a derogating control order made against him on the Secretary of State's application; or

(b) the court has dismissed the application.

(6) A person who has the powers of a constable in one part of the United Kingdom may exercise the power of arrest under this section in that part of the United Kingdom or in any other part of the United Kingdom.

(7) An individual detained under this section-

(a) shall be deemed to be in legal custody throughout the period of his detention; and

(b) after having been taken to a designated place shall be deemed-

(i) in England and Wales, to be in police detention for the purposes of the Police and Criminal Evidence Act 1984 (c. 60); and

(ii) in Northern Ireland, to be in police detention for the purposes of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

but paragraph (b) has effect subject to subsection (8).

(8) Paragraphs 1(6), 2, 6 to 9 and 16 to 19 of Schedule 8 to the Terrorism Act 2000 (c. 11) (powers and safeguards in the case of persons detained under section 41 of that Act) apply to an individual detained under this section as they apply to a person detained under section 41 of that Act, but with the following modifications-

(a) the omission of paragraph 2(2)(b) to (d) (which confers powers on persons specified by the Secretary of State, prison officers and examining officers);

(b) the omission of paragraph 8(2), (5) and (5A) (which relates to the postponement of a person's rights in England and Wales or Northern Ireland); and

(c) the omission of paragraphs 16(9) and 17(4) and (4A) (which make similar provision for Scotland).

(9) The power to detain an individual under this section includes power to detain him in a manner that is incompatible with his right to liberty under Article 5 of the Human Rights Convention if, and only if-

(a) there is a designated derogation in respect of the detention of individuals under this section in connection with the making of applications for derogating control orders; and

(b) that derogation and the designated derogation relating to the power to make the orders applied for are designated in respect of the same public emergency.

(10) In this section "designated place" means any place which the Secretary of State has designated under paragraph 1(1) of Schedule 8 to the Terrorism Act 2000 (c. 11) as a place at which persons may be detained under section 41 of that Act.

## **6 Duration of derogating control orders**

(1) A derogating control order has effect at a time only if-

(a) the relevant derogation remains in force at that time; and

(b) that time is not more than 12 months after-

(i) the making of the order under section 14(1) of the Human Rights Act 1998 (c. 42) designating that derogation; or

(ii) the making by the Secretary of State of an order declaring that it continues to be necessary for him to have power to impose derogating obligations by reference to that derogation.

(2) The power of the Secretary of State to make an order containing a declaration for the purposes of subsection (1)(b)(ii) is exercisable by statutory instrument.

(3) No order may be made by the Secretary of State containing such a declaration unless a draft of it has been laid before Parliament and approved by a resolution of each House.

(4) Subsection (3) does not apply to an order that contains a statement by the Secretary of State that the order needs, by reason of urgency, to be made without the approval required by that subsection.

(5) An order under this section that contains such a statement-

(a) must be laid before Parliament after being made; and

(b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which the order was made, ceases to have effect at the end of that period.

(6) Where an order ceases to have effect in accordance with subsection (5), that does not-

(a) affect anything previously done in reliance on the order; or

(b) prevent the Secretary of State from exercising any power of his to make a new order for the purposes of subsection (1)(b)(ii) to the same or similar effect.

(7) In this section-

"40 days" means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946 (c. 36);

"the relevant derogation", in relation to a derogating control order, means the designated derogation by reference to which the derogating obligations imposed by that order were imposed.

## **7 Modification, notification and proof of orders etc.**

(1) If while a non-derogating control order is in force the controlled person considers that there has been a change of circumstances affecting the order, he may make an application to the Secretary of State for-

(a) the revocation of the order; or

(b) the modification of an obligation imposed by the order;

and it shall be the duty of the Secretary of State to consider the application.

(2) The Secretary of State may, at any time (whether or not in response to an application by the controlled person)-

(a) revoke a non-derogating control order;

(b) relax or remove an obligation imposed by such an order;

(c) with the consent of the controlled person, modify the obligations imposed by such an order; or

(d) make to the obligations imposed by such an order any modifications which he considers necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity.

(3) The Secretary of State may not make to the obligations imposed by a control order any modification the effect of which is that a non-derogating control order becomes an order imposing a derogating obligation.

(4) An application may be made at any time to the court-

(a) by the Secretary of State, or

(b) by the controlled person,

for the revocation of a derogating control order or for the modification of obligations imposed by such an order.

(5) On such an application, the court may modify the obligations imposed by the derogating control order only where-

(a) the modification consists in the removal or relaxation of an obligation imposed by the order;

(b) the modification has been agreed to by both the controlled person and the Secretary of State; or

(c) the modification is one which the court considers necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity.

(6) The court may not, by any modification of the obligations imposed by a derogating control order, impose any derogating obligation unless-

(a) it considers that the modification is necessary for purposes connected with protecting members of the public from a risk of terrorism; and

(b) it appears to the court that the risk is one arising out of, or is associated with, the public emergency in respect of which the designated derogation in question has effect.

(7) If the court at any time determines that a derogating control order needs to be modified so that it no longer imposes derogating obligations, it must revoke the order.

(8) The controlled person is bound by-

(a) a control order,

(b) the renewal of a control order, or

(c) a modification by virtue of subsection (2)(d) or (5)(c),

only if a notice setting out the terms of the order, renewal or modification has been delivered to him in person.

(9) For the purpose of delivering a notice under subsection (8) to the controlled person a constable or a person authorised for the purpose by the Secretary of State may (if necessary by force)-

(a) enter any premises where he has reasonable grounds for believing that person to be; and

(b) search those premises for him.

(10) Where the Secretary of State revokes a control order or modifies it by virtue of subsection (2)(b) or (c)-

(a) he must give notice of the revocation or modification to the controlled person; and

(b) the notice must set out the time from which the revocation or modification takes effect.

(11) A control order, or the renewal, revocation or modification of such an order, may be proved by the production of a document purporting to be certified by the Secretary of State or the court as a true copy of-

(a) the order; or

(b) the instrument of renewal, revocation or modification;

but this does not prevent the proof of a control order, or of the renewal, revocation or modification of such an order, in other ways.

## **8 Criminal investigations after making of control order**

(1) This section applies where it appears to the Secretary of State-

(a) that the involvement in terrorism-related activity of which an individual is suspected may have involved the commission of an offence relating to terrorism; and

(b) that the commission of that offence is being or would fall to be investigated by a police force.

(2) Before making, or applying for the making of, a control order against the individual, the Secretary of State must consult the chief officer of the police force about whether there is evidence available that could realistically be used for the purposes of a prosecution of the individual for an offence relating to terrorism.

(3) If a control order is made against the individual the Secretary of State must inform the chief officer of the police force that the control order has been made and that subsection (4) applies.

(4) It shall then be the duty of the chief officer to secure that the investigation of the individual's conduct with a view to his prosecution for an offence relating to terrorism is kept under review throughout the period during which the control order has effect.

(5) In carrying out his functions by virtue of this section the chief officer must consult the relevant prosecuting authority, but only, in the case of the performance of his duty under subsection (4), to the extent that he considers it appropriate to do so.

(6) The requirements of subsection (5) may be satisfied by consultation that took place wholly or partly before the passing of this Act.

(7) In this section-

"chief officer"-

(a) in relation to a police force maintained for a police area in England and Wales, means the chief officer of police of that force;

(b) in relation to a police force maintained under the Police (Scotland) Act 1967 (c. 77), means the chief constable of that force;

(c) in relation to the Police Service of Northern Ireland, means the Chief Constable of that Service;

(d) in relation to the Serious Organised Crime Agency, means the Director General of that Agency; and

(e) in relation to the Scottish Drug Enforcement Agency, means the Director of that Agency;

"police force" means-

(a) a police force maintained for a police area in England and Wales;

(b) a police force maintained under the Police (Scotland) Act 1967;

(c) the Police Service of Northern Ireland;

(d) the Serious Organised Crime Agency; or

(e) the Scottish Drug Enforcement Agency;

"relevant prosecuting authority"-

(a) in relation to offences that would be likely to be prosecuted in England and Wales, means the Director of Public Prosecutions;

(b) in relation to offences that would be likely to be prosecuted in Scotland, means the appropriate procurator fiscal;

(c) in relation to offences that would be likely to be prosecuted in Northern Ireland, means the Director of Public Prosecutions for Northern Ireland.

(8) In relation to times before the Serious Organised Crime Agency begins to carry out its functions, this section is to have effect as if-

(a) the National Crime Squad were a police force; and

(b) references, in relation to that Squad, to its chief officer were references to its Director General.

(9) In subsection (7)-

"the Scottish Drug Enforcement Agency" means the organisation known by that name and established under section 36(1)(a)(ii) of the Police (Scotland) Act 1967; and

"the Director" of that Agency means the person engaged on central service (as defined by section 38(5) of that Act) and for the time being appointed by the Scottish Ministers to exercise control in relation to the activities carried out in the exercise of the Agency's functions.

## **9 Offences**

(1) A person who, without reasonable excuse, contravenes an obligation imposed on him by a control order is guilty of an offence.

(2) A person is guilty of an offence if-

(a) a control order by which he is bound at a time when he leaves the United Kingdom requires him, whenever he enters the United Kingdom, to report to a specified person that he is or has been the subject of such an order;

(b) he re-enters the United Kingdom after the order has ceased to have effect;

(c) the occasion on which he re-enters the United Kingdom is the first occasion on which he does so after leaving while the order was in force; and

(d) on that occasion he fails, without reasonable excuse, to report to the specified person in the manner that was required by the order.

(3) A person is guilty of an offence if he intentionally obstructs the exercise by any person of a power conferred by section 7(9).

(4) A person guilty of an offence under subsection (1) or (2) shall be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both;

(b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;

(c) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.

(5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (4)(b) to 12 months is to be read as a reference to 6 months.

(6) Where a person is convicted by or before any court of an offence under subsection (1) or (2), it is not to be open to the court, in respect of that offence-

(a) to make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conditional discharge);

(b) to make an order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (probation orders); or

(c) to make an order under Article 4(1)(b) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conditional discharge in Northern Ireland).

(7) A person guilty of an offence under subsection (3) shall be liable-

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale, or to both;

(b) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

(8) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (7)(a) to 51 weeks is to be read as a reference to 6 months.

(9) In Schedule 1A to the Police and Criminal Evidence Act 1984 (c. 60) (arrestable offences), at the end insert-

"27A *Prevention of Terrorism Act 2005*

An offence under section 9(3) of the Prevention of Terrorism Act 2005."

(10) In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (offences for which an arrest may be made without a warrant in Northern Ireland), at the end insert-

"(o) an offence under section 9(3) of the Prevention of Terrorism Act 2005."

*Appeals and other proceedings*

**10 Appeals relating to non-derogating control orders**

(1) Where-

(a) a non-derogating control order has been renewed, or

(b) an obligation imposed by such an order has been modified without the consent of the controlled person,

the controlled person may appeal to the court against the renewal or modification.

(2) In the case of an appeal against a renewal with modifications, the appeal may include an appeal against some or all of the modifications.

(3) Where an application is made by the controlled person to the Secretary of State for-

(a) the revocation of a non-derogating control order, or

(b) the modification of an obligation imposed by such an order,

that person may appeal to the court against any decision by the Secretary of State on the application.

(4) The function of the court on an appeal against the renewal of a non-derogating control order, or on an appeal against a decision not to revoke such an order, is to determine whether either or both of the following decisions of the Secretary of State was flawed-

(a) his decision that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for an order imposing obligations on the controlled person to continue in force;

(b) his decision that the obligations to be imposed by the renewed order, or (as the case may be) the obligations imposed by the order to which the application for revocation relates, are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity.

(5) The function of the court on an appeal against a modification of an obligation imposed by a non-derogating control order (whether on a renewal or otherwise), or on an appeal against a decision not to modify such an obligation, is to determine whether the following decision of the Secretary of State was flawed-

(a) in the case of an appeal against a modification, his decision that the modification is necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity; and

(b) in the case of an appeal against a decision on an application for the modification of an obligation, his decision that the obligation continues to be necessary for that purpose.

(6) In determining the matters mentioned in subsections (4) and (5) the court must apply the principles applicable on an application for judicial review.

(7) If the court determines on an appeal under this section that a decision of the Secretary of State was flawed, its only powers are-

(a) power to quash the renewal of the order;

(b) power to quash one or more obligations imposed by the order; and

(c) power to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes.

(8) In every other case, the court must dismiss the appeal.

## **11 Jurisdiction and appeals in relation to control order decisions etc.**

(1) Control order decisions and derogation matters are not to be questioned in any legal proceedings other than-

(a) proceedings in the court; or

(b) proceedings on appeal from such proceedings.

(2) The court is the appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 (c. 42) in relation to proceedings all or any part of which call a control order decision or derogation matter into question.

(3) No appeal shall lie from any determination of the court in control order proceedings, except on a question of law.

(4) No appeal by any person other than the Secretary of State shall lie from any determination-

(a) on an application for permission under section 3(1)(a); or

(b) on a reference under section 3(3)(a).

(5) The Schedule to this Act (which makes provision relating to and for the purposes of control order proceedings and proceedings on appeal from such proceedings) has effect.

(6) In this Act "control order proceedings" means-

(a) proceedings on an application for permission under section 3(1)(a);

(b) proceedings on a reference under section 3(3)(a);

(c) proceedings on a hearing in pursuance of directions under section 3(2)(c) or (6)(b) or (c);

(d) proceedings on an application to the court by any person for the making, renewal, modification or revocation of a derogating control order;

(e) proceedings on an application to extend the detention of a person under section 5;

(f) proceedings at or in connection with a hearing to determine whether to confirm a derogating control order (with or without modifications);

(g) proceedings on an appeal under section 10;

(h) proceedings in the court by virtue of subsection (2);

(i) any other proceedings in the court for questioning a control order decision, a derogation matter or the arrest or detention of a person under section 5;

(j) proceedings on an application made by virtue of rules of court under paragraph 5(1) of the Schedule to this Act (application for order requiring anonymity for the controlled person).

(7) In this section "control order decision" means-

(a) a decision made by the Secretary of State in exercise or performance of any power or duty of his under any of sections 1 to 8 or for the purposes of or in connection with the exercise or performance of any such power or duty;

(b) a decision by any other person to give a direction, consent or approval, or to issue a demand, for the purposes of any obligation imposed by a control order; or

(c) a decision by any person that is made for the purposes of or in connection with the exercise of his power to give such a direction, consent or approval or to issue such a demand.

(8) In this section "derogation matter" means-

(a) a derogation by the United Kingdom from the Human Rights Convention which relates to infringement of a person's right to liberty under Article 5 in consequence of obligations imposed on him by a control order or of his arrest or detention under section 5; or

(b) the designation of such a derogation under section 14(1) of the Human Rights Act 1998 (c. 42).

## **12 Effect of court's decisions on convictions**

(1) This section applies where-

(a) a control order, a renewal of a control order or an obligation imposed by a control order is quashed by the court in control order proceedings, or on an appeal from a determination in such proceedings; and

(b) before it was quashed a person had been convicted by virtue of section 9(1) or (2) of an offence of which he could not have been convicted had the order, renewal or (as the case may be) obligation been quashed before the proceedings for the offence were brought.

(2) The person convicted may appeal against the conviction-

(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; and

(d) in the case of a summary conviction in Northern Ireland, to the county court.

(3) On an appeal under this section to any court, that court must allow the appeal and quash the conviction.

(4) An appeal under this section to the Court of Appeal against a conviction on indictment-

(a) may be brought irrespective of whether the appellant has previously appealed against his conviction;

(b) may not be brought more than 28 days after the date of the quashing of the order, renewal or obligation; and

(c) is to be treated as an appeal under section 1 of the Criminal Appeal Act 1968 (c. 19) or, in Northern Ireland, under section 1 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47), but does not require leave in either case.

(5) An appeal under this section to the High Court of Justiciary against a conviction on indictment-

(a) may be brought irrespective of whether the appellant has previously appealed against his conviction;

(b) may not be brought more than two weeks after the date of the quashing of the order, renewal or obligation; and

(c) is to be treated as an appeal under section 106 of the Criminal Procedure (Scotland) Act 1995 (c. 46) for which leave has been granted.

(6) An appeal under this section 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 his conviction;

(c) may not be brought more than two weeks after the date of the quashing of the order, renewal or obligation;

(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.

(7) An appeal under this section 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 he has previously appealed against his conviction or made an application in respect of the conviction under section 111 of the Magistrates' Courts Act 1980 (c. 43) 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 more than 21 days after the date of the quashing of the order, renewal or obligation; 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.

(8) In section 133(5) of the Criminal Justice Act 1988 (c. 33) (compensation for miscarriages of justice), at the end of paragraph (c) insert "or

(d) on an appeal under section 12 of the Prevention of Terrorism Act 2005."

### *Supplemental*

## **13 Duration of sections 1 to 9**

(1) Except so far as otherwise provided under this section, sections 1 to 9 expire at the end of the period of 12 months beginning with the day on which this Act is passed.

(2) The Secretary of State may, by order made by statutory instrument-

(a) repeal sections 1 to 9;

(b) at any time revive those sections for a period not exceeding one year; or

(c) provide that those sections-

(i) are not to expire at the time when they would otherwise expire under subsection (1) or in accordance with an order under this subsection; but

(ii) are to continue in force after that time for a period not exceeding one year.

(3) Before making an order under this section the Secretary of State must consult-

(a) the person appointed for the purposes of section 14(2);

(b) the Intelligence Services Commissioner; and

(c) the Director-General of the Security Service.

(4) No order may be made by the Secretary of State under this section unless a draft of it has been laid before Parliament and approved by a resolution of each House.

(5) Subsection (4) does not apply to an order that contains a declaration by the Secretary of State that the order needs, by reason of urgency, to be made without the approval required by that subsection.

(6) An order under this section that contains such a declaration-

(a) must be laid before Parliament after being made; and

(b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which the order was made, ceases to have effect at the end of that period.

(7) Where an order ceases to have effect in accordance with subsection (6), that does not-

(a) affect anything previously done in reliance on the order; or

(b) prevent the making of a new order to the same or similar effect.

(8) Where sections 1 to 9 expire or are repealed at any time by virtue of this section, that does not prevent or otherwise affect-

(a) the court's consideration of a reference made before that time under subsection (3)(a) of section 3;

(b) the holding or continuation after that time of any hearing in pursuance of directions under subsection (2)(c) or (6)(b) or (c) of that section;

(c) the holding or continuation after that time of a hearing to determine whether to confirm a derogating control order (with or without modifications); or

(d) the bringing or continuation after that time of any appeal, or further appeal, relating to a decision in any proceedings mentioned in paragraphs (a) to (c) of this subsection;

but proceedings may be begun or continued by virtue of this subsection so far only as they are for the purpose of determining whether a certificate of the Secretary of State, a control order or an obligation imposed by such an order should be quashed or treated as quashed.

(9) Nothing in this Act about the period for which a control order is to have effect or is renewed enables such an order to continue in force after the provision under which it was made or last renewed has expired or been repealed by virtue of this section.

(10) In subsection (6) "40 days" means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946 (c. 36).

## **14 Reporting and review**

(1) As soon as reasonably practicable after the end of every relevant 3 month period, the Secretary of State must-

(a) prepare a report about his exercise of the control order powers during that period; and

(b) lay a copy of that report before Parliament.

(2) The Secretary of State must also appoint a person to review the operation of this Act.

(3) As soon as reasonably practicable after the end of-

(a) the period of 9 months beginning with the day on which this Act is passed, and

(b) every 12 month period which ends with the first or a subsequent anniversary of the end of the period mentioned in the preceding paragraph and is a period during the whole or a part of which sections 1 to 9 of this Act were in force,

the person so appointed must carry out a review of the operation of this Act during that period.

(4) The person who conducts a review under this section must send the Secretary of State a report on its outcome as soon as reasonably practicable after completing the review.

(5) That report must also contain the opinion of the person making it on-

(a) the implications for the operation of this Act of any proposal made by the Secretary of State for the amendment of the law relating to terrorism; and

(b) the extent (if any) to which the Secretary of State has made use of his power by virtue of section 3(1)(b) to make non-derogating control orders in urgent cases without the permission of the court.

(6) On receiving a report under subsection (4), the Secretary of State must lay a copy of it before Parliament.

(7) The Secretary of State may pay the expenses of a person appointed to carry out a review and may also pay him such allowances as the Secretary of State determines.

(8) In this section-

"control order powers" means-

(a) the powers of the Secretary of State under this Act to make, renew, modify and revoke control orders; and

(b) his powers to apply to the court for the making, renewal, revocation or modification of derogating control orders;

"relevant 3 month period" means-

(a) the period of 3 months beginning with the passing of this Act;

(b) a period of 3 months beginning with a time which-

(i) is the beginning of a period for which sections 1 to 9 are revived by an order under section 13; and

(ii) falls more than 3 months after the time when those sections were last in force before being revived;

(c) a 3 month period which begins with the end of a previous relevant 3 month period and is a period during the whole or a part of which those sections are in force.

## **15 General interpretation**

(1) In this Act-

"act" and "conduct" include omissions and statements;

"act of terrorism" includes anything constituting an action taken for the purposes of terrorism, within the meaning of the Terrorism Act 2000 (c. 11) (see section 1(5) of that Act);

"apparatus" includes any equipment, machinery or device and any wire or cable, together with any software used with it;

"article" and "information" include documents and other records, and software;

"contravene" includes fail to comply, and cognate expressions are to be construed accordingly;

"control order" has the meaning given by section 1(1);

"control order proceedings" has the meaning given by section 11(6);

"the controlled person", in relation to a control order, means the individual on whom the order imposes obligations;

"the court"-

(a) in relation to proceedings relating to a control order in the case of which the controlled person is a person whose principal place of residence is in Scotland, means the Outer House of the Court of Session;

(b) in relation to proceedings relating to a control order in the case of which the controlled person is a person whose principal place of residence is in Northern Ireland, means the High Court in Northern Ireland; and

(c) in any other case, means the High Court in England and Wales;

"derogating control order" means a control order imposing obligations that are or include derogating obligations;

"derogating obligation", "designated derogation" and "designation order" have the meanings given by section 1(10);

"the Human Rights Convention" means the Convention within the meaning of the Human Rights Act 1998 (c. 42) (see section 21(1) of that Act);

"modification" includes omission, addition or alteration, and cognate expressions are to be construed accordingly;

"non-derogating control order" means a control order made by the Secretary of State;

"passport" means-

(a) a United Kingdom passport (within the meaning of the Immigration Act 1971 (c. 77));

(b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation;

(c) a document that can be used (in some or all circumstances) instead of a passport;

"premises" includes any vehicle, vessel, aircraft or hovercraft;

"the public" means the public in the whole or a part of the United Kingdom or the public in another country or territory, or any section of the public;

"specified", in relation to a control order, means specified in that order or falling within a description so specified;

"terrorism" has the same meaning as in the Terrorism Act 2000 (c. 11) (see section 1(1) to (4) of that Act);

"terrorism-related activity" and, in relation to such activity, "involvement" are to be construed in accordance with section 1(9).

(2) A power under this Act to quash a control order, the renewal of such an order or an obligation imposed by such an order includes power-

(a) in England and Wales or Northern Ireland, to stay the quashing of the order, renewal or obligation pending an appeal, or further appeal, against the decision to quash; and

(b) in Scotland, to determine that the quashing is of no effect pending such an appeal or further appeal.

(3) Every power of the Secretary of State or of the court to revoke a control order or to modify the obligations imposed by such an order-

(a) includes power to provide for the revocation or modification to take effect from such time as the Secretary of State or (as the case may be) the court may determine; and

(b) in the case of a revocation by the court (including a revocation in pursuance of section 7(7)) includes power to postpone the effect of the revocation either pending an appeal or for the purpose of giving the Secretary of State an opportunity to decide whether to exercise his own powers to make a control order against the individual in question.

(4) For the purposes of this Act a failure by the Secretary of State to consider an application by the controlled person for-

(a) the revocation of a control order, or

(b) the modification of an obligation imposed by such an order,

is to be treated as a decision by the Secretary of State not to revoke or (as the case may be) not to modify the order.

## **16 Other supplemental provisions**

(1) This Act may be cited as the Prevention of Terrorism Act 2005.

(2) The following provisions are repealed-

(a) sections 21 to 32 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (suspected international terrorists);

(b) in section 1(4) of the Special Immigration Appeals Commission Act 1997 (c. 68), paragraph (b) (which refers to section 30 of the 2001 Act) and the word "or" immediately preceding it;

(c) section 62(15) and (16) of the Nationality, Immigration and Asylum Act 2002 (c. 41) and paragraph 30 of Schedule 7 to that Act (which amended sections 23, 24 and 27 of the 2001 Act); and

(d) section 32 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (which amended sections 24 and 27 of the 2001 Act).

(3) Subsection (2) comes into force on 14th March 2005.

(4) The repeals made by this Act do not prevent or otherwise affect-

(a) the continuation of any appeal to the Special Immigration Appeals Commission under section 25(1) of the Anti-terrorism, Crime and Security Act 2001 that has been brought but not concluded before the commencement of those repeals;

(b) the bringing or continuation of a further appeal relating to a decision of that Commission on such an appeal or on any other appeal brought under section 25(1) of that Act before the commencement of those repeals; or

(c) any proceedings resulting from a decision on a further appeal from such a decision;

but no other proceedings before that Commission under Part 4 of that Act, nor any appeal or further appeal relating to any such other proceedings, may be brought or continued at any time after the commencement of the repeals.

(5) The Secretary of State may enter into such contracts and other arrangements with other persons as he considers appropriate for securing their assistance in connection with any monitoring, by electronic or other means, that he considers needs to be carried out in connection with obligations that have been or may be imposed by or under control orders.

(6) There shall be paid out of money provided by Parliament-

(a) any expenditure incurred by the Secretary of State by virtue of this Act; and

(b) any increase attributable to this Act in the sums payable out of such money under any other Act.

(7) This Act extends to Northern Ireland.

(8) Her Majesty may by Order in Council direct that this Act shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

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# Prevention of Terrorism Act 2005

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### SCHEDULE

#### Section 11

#### CONTROL ORDER PROCEEDINGS ETC.

##### *Introductory*

- 1 (1) In this Schedule "the relevant powers" means the powers to make rules of court for regulating the practice and procedure to be followed in proceedings in the court, the Court of Appeal or the Inner House of the Court of Session, so far as those powers are exercisable in relation to-

- (a) control order proceedings; or

- (b) relevant appeal proceedings.

- (2) In this Schedule "relevant appeal proceedings" means proceedings in the Court of Appeal or Inner House of the Court of Session on an appeal relating to any control order proceedings.

##### *General duty applying to exercise of the relevant powers*

- 2 A person exercising the relevant powers must have regard, in particular, to-
  - (a) the need to secure that the making and renewal of control orders and the imposition and modification of the obligations contained in such orders are properly reviewed; and

(b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.

*Initial exercise of relevant powers*

3 (1) This paragraph applies-

(a) on the first occasion after the passing of this Act on which the relevant powers are exercised in relation to control order proceedings and relevant appeal proceedings in England and Wales; and

(b) on the first occasion after the passing of this Act on which they are so exercised in relation to control order proceedings and relevant appeal proceedings in Northern Ireland.

(2) On each of those occasions-

(a) the relevant powers may be exercised by the Lord Chancellor, instead of by the person by whom they are otherwise exercisable; and

(b) the Lord Chancellor is not required, before exercising the powers, to undertake any consultation that would be required in the case of rules made by that person.

(3) The Lord Chancellor must-

(a) consult the Lord Chief Justice of England and Wales before making any rules under this paragraph in relation to England and Wales; and

(b) consult the Lord Chief Justice of Northern Ireland before making any rules under this paragraph in relation to Northern Ireland.

(4) The requirements of sub-paragraph (3) 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 by virtue of this paragraph-

(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) Where rules cease to have effect in accordance with sub-paragraph (5)-

(a) that does not affect anything previously done in reliance on the rules;

(b) the Lord Chancellor is to have power again to exercise the relevant powers, in relation to the proceedings in question, instead of the person by whom they are otherwise exercisable;

(c) he may exercise them on that occasion without undertaking any consultation that would be required in the case of rules made by that person; and

(d) the rules made by the Lord Chancellor on that occasion may include rules to the same or similar effect.

(7) The following provisions do not apply to rules made by the Lord Chancellor by virtue of this paragraph-

(a) section 3(2) of the Civil Procedure Act 1997 (c. 12) (negative resolution procedure);

(b) section 56 of the Judicature (Northern Ireland) Act 1978 (c. 23) (statutory rules procedure).

(8) In sub-paragraph (5) "40 days" means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946 (c. 36).

*Special powers to make rules of court*

4 (1) Rules of court made in exercise of the relevant powers may, in particular-

(a) make provision about the mode of proof in control order proceedings and about evidence in such proceedings;

(b) enable or require such proceedings to be determined without a hearing; and

(c) make provision about legal representation in such proceedings.

(2) Rules of court made in exercise of the relevant powers may also, in particular-

(a) make provision enabling control order proceedings or relevant appeal proceedings to take place without full particulars of the reasons for decisions to which the proceedings relate being given to a relevant party to the proceedings or his legal representative (if he has one);

(b) make provision enabling the relevant court to conduct proceedings in the absence of any person, including a relevant party to the proceedings and his legal representative (if he has one);

(c) make provision about the functions in control order proceedings and relevant appeal proceedings of persons appointed under paragraph 7; and

(d) make provision enabling the relevant court to give a relevant party to control order proceedings or relevant appeal proceedings a summary of evidence taken in his absence.

- (3) Rules of court made in exercise of the relevant powers must secure-
- (a) that in control order proceedings and relevant appeal proceedings the Secretary of State is required (subject to rules made under the following paragraphs) to disclose all relevant material;
  - (b) that the Secretary of State has the opportunity to make an application to the relevant court for permission not to disclose relevant material otherwise than to that court and persons appointed under paragraph 7;
  - (c) that such an application is always considered in the absence of every relevant party to the proceedings and of his legal representative (if he has one);
  - (d) that the relevant court is required to give permission for material not to be disclosed where it considers that the disclosure of the material would be contrary to the public interest;
  - (e) that, where permission is given by the relevant court not to disclose material, it must consider requiring the Secretary of State to provide the relevant party and his legal representative (if he has one) with a summary of the material;
  - (f) that the relevant court is required to ensure that such a summary does not contain information or other material the disclosure of which would be contrary to the public interest;
  - (g) that provision satisfying the requirements of sub-paragraph (4) applies where the Secretary of State does not have the relevant court's permission to withhold relevant material from a relevant party to the proceedings or his legal representative (if he has one), or is required to provide a summary of such material to that party or his legal representative.

(4) The provision that satisfies the requirements of this sub-paragraph is provision which, in a case where the Secretary of State elects not to disclose the relevant material or (as the case may be) not to provide the summary, authorises the relevant court-

(a) if it considers that the relevant material or anything that is required to be summarised might be of assistance to a relevant party in relation to a matter under consideration by that court, to give directions for securing that the matter is withdrawn from the consideration of that court; and

(b) in any other case, to ensure that the Secretary of State does not rely in the proceeding on the material or (as the case may be) on what is required to be summarised.

(5) In this paragraph "relevant material", in relation to any proceedings, means-

(a) any information or other material that is available to the Secretary of State and relevant to the matters under consideration in those proceedings; or

(b) the reasons for decisions to which the proceedings relate.

*Application for anonymity for controlled person*

5 (1) Rules of court made in exercise of the relevant powers may provide for-

(a) the making by the Secretary of State or the controlled person, at any time after a control order has been made, of an application to the court for an order requiring anonymity for that person; 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 control order 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 relevant appeal proceedings requiring anonymity for the controlled person.

(3) In sub-paragraphs (1) and (2) the references, in relation to a court, to an order requiring anonymity for the controlled person 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 controlled person or of any information that would tend to identify him.

#### *Use of advisers*

6 (1) In any control order proceedings the court may, if it thinks fit-

(a) call in aid one or more advisers appointed for the purpose by the Lord Chancellor; and

(b) hear and dispose of the proceedings with the assistance of the adviser or advisers.

(2) Rules of court may regulate the use of advisers in accordance with the power conferred by this paragraph.

(3) The Lord Chancellor may, out of money provided by Parliament, pay such remuneration, expenses and allowances to advisers appointed for the purposes of this paragraph as he may determine.

*Special representation in control order proceedings*

7 (1) The relevant law officer may appoint a person to represent the interests of a relevant party to relevant proceedings in any of those proceedings from which that party and his legal representative (if he has one) are excluded.

(2) In sub-paragraph (1) "relevant proceedings" means-

(a) control order proceedings; or

(b) proceedings on an appeal or further appeal relating to control order proceedings.

(3) A person may be appointed under this paragraph-

(a) in the case of an appointment by the Attorney General, only if he has a general legal qualification for the purposes of section 71 of the Courts and Legal Services Act 1990 (c. 41);

(b) in the case of an appointment by the Advocate General for Scotland, only if he is a person with appropriate rights of audience in Scotland; and

(c) in the case of an appointment by the Advocate General for Northern Ireland, only if he is a member of the Bar of Northern Ireland.

(4) In sub-paragraph (3) "person with appropriate rights of audience in Scotland" means-

(a) an advocate; or

(b) a solicitor with rights of audience by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46) in the Court of Session or the High Court of Justiciary.

(5) A person appointed under this paragraph is not to be responsible to the person whose interests he is appointed to represent.

(6) In this paragraph "the relevant law officer" means-

(a) in relation to control order proceedings in England and Wales or proceedings on an appeal or further appeal relating to such proceedings, the Attorney General;

(b) in relation to proceedings in Scotland or proceedings on an appeal or further appeal relating to such proceedings, the Advocate General for Scotland;

(c) in relation to proceedings in Northern Ireland or proceedings on an appeal or further appeal relating to such proceedings, the Advocate General for Northern Ireland.

(7) In relation to any time before the coming into force of section 27 of the Justice (Northern Ireland) Act 2002 (c. 26), references in this paragraph to the Advocate General for Northern Ireland are to have effect as references to the Attorney General for Northern Ireland.

*Effect of court orders*

8 (1) Where-

(a) a control order,

(b) the renewal of such an order, or

(c) an obligation imposed by such an order,

is quashed, the order, renewal or (as the case may be) obligation shall be treated for the purposes of section 9(1) and (2) as never having been made or imposed.

(2) A decision by the court or on appeal from the court-

(a) to quash a control order, the renewal of a control order or an obligation imposed by such an order, or

(b) to give directions to the Secretary of State in relation to such an order,

does not prevent the Secretary of State from exercising any power of his to make a new control order to the same or similar effect or from relying, in whole or in part, on the same matters for the purpose of making that new order.

*Interception evidence*

9 (1) Section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of interception matters from legal proceedings) is amended as follows.

(2) In subsection (1), after paragraph (d) insert-

"(da) any control order proceedings (within the meaning of the Prevention of Terrorism Act 2005) or any proceedings arising out of such proceedings;"

(3) In subsection (2) (persons disclosures to whom continue to be prohibited despite section 18), for "paragraph (e) or (f)" substitute "paragraphs (da) to (f)".

(4) In that subsection, before paragraph (a) insert-

"(za) in the case of any proceedings falling within paragraph (da) to-

(i) a person who, within the meaning of the Schedule to the Prevention of Terrorism Act 2005, is or was a relevant party to the control order proceedings; or

(ii) any person who for the purposes of any proceedings so falling (but otherwise than by virtue of an appointment under paragraph 7 of that Schedule) represents a person falling within sub-paragraph (i);".

*Allocation to Queen's Bench Division*

10 In paragraph 2 of Schedule 1 to the Supreme Court Act 1981 (c. 54) (business allocated to Queen's Bench Division), after sub-paragraph (b) insert-

"(ba) all control order proceedings (within the meaning of the Prevention of Terrorism Act 2005);".

*Interpretation of Schedule*

11 In this Schedule-

"legal representative", in relation to a relevant party to proceedings, does not include a person appointed under paragraph 7 to represent that party's interests;

"relevant appeal proceedings" has the meaning given by paragraph 1 (2);

"relevant court"-

(a) in relation to control order proceedings, means the court; and

(b) in relation to relevant appeal proceedings, means the Court of Appeal or the Inner House of the Court of Session;

"relevant party", in relation to control order proceedings or relevant appeal proceedings, means any party to the proceedings other than the Secretary of State;

"relevant powers" has the meaning given by paragraph 1(1).

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### SCHEDULE

#### Section 11

#### CONTROL ORDER PROCEEDINGS ETC.

##### *Introductory*

- 1 (1) In this Schedule "the relevant powers" means the powers to make rules of court for regulating the practice and procedure to be followed in proceedings in the court, the Court of Appeal or the Inner House of the Court of Session, so far as those powers are exercisable in relation to-

- (a) control order proceedings; or

- (b) relevant appeal proceedings.

- (2) In this Schedule "relevant appeal proceedings" means proceedings in the Court of Appeal or Inner House of the Court of Session on an appeal relating to any control order proceedings.

##### *General duty applying to exercise of the relevant powers*

- 2 A person exercising the relevant powers must have regard, in particular, to-
  - (a) the need to secure that the making and renewal of control orders and the imposition and modification of the obligations contained in such orders are properly reviewed; and

(b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.

*Initial exercise of relevant powers*

3 (1) This paragraph applies-

(a) on the first occasion after the passing of this Act on which the relevant powers are exercised in relation to control order proceedings and relevant appeal proceedings in England and Wales; and

(b) on the first occasion after the passing of this Act on which they are so exercised in relation to control order proceedings and relevant appeal proceedings in Northern Ireland.

(2) On each of those occasions-

(a) the relevant powers may be exercised by the Lord Chancellor, instead of by the person by whom they are otherwise exercisable; and

(b) the Lord Chancellor is not required, before exercising the powers, to undertake any consultation that would be required in the case of rules made by that person.

(3) The Lord Chancellor must-

(a) consult the Lord Chief Justice of England and Wales before making any rules under this paragraph in relation to England and Wales; and

(b) consult the Lord Chief Justice of Northern Ireland before making any rules under this paragraph in relation to Northern Ireland.

(4) The requirements of sub-paragraph (3) 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 by virtue of this paragraph-

(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) Where rules cease to have effect in accordance with sub-paragraph (5)-

(a) that does not affect anything previously done in reliance on the rules;

(b) the Lord Chancellor is to have power again to exercise the relevant powers, in relation to the proceedings in question, instead of the person by whom they are otherwise exercisable;

(c) he may exercise them on that occasion without undertaking any consultation that would be required in the case of rules made by that person; and

(d) the rules made by the Lord Chancellor on that occasion may include rules to the same or similar effect.

(7) The following provisions do not apply to rules made by the Lord Chancellor by virtue of this paragraph-

(a) section 3(2) of the Civil Procedure Act 1997 (c. 12) (negative resolution procedure);

(b) section 56 of the Judicature (Northern Ireland) Act 1978 (c. 23) (statutory rules procedure).

(8) In sub-paragraph (5) "40 days" means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946 (c. 36).

*Special powers to make rules of court*

4 (1) Rules of court made in exercise of the relevant powers may, in particular-

(a) make provision about the mode of proof in control order proceedings and about evidence in such proceedings;

(b) enable or require such proceedings to be determined without a hearing; and

(c) make provision about legal representation in such proceedings.

(2) Rules of court made in exercise of the relevant powers may also, in particular-

(a) make provision enabling control order proceedings or relevant appeal proceedings to take place without full particulars of the reasons for decisions to which the proceedings relate being given to a relevant party to the proceedings or his legal representative (if he has one);

(b) make provision enabling the relevant court to conduct proceedings in the absence of any person, including a relevant party to the proceedings and his legal representative (if he has one);

(c) make provision about the functions in control order proceedings and relevant appeal proceedings of persons appointed under paragraph 7; and

(d) make provision enabling the relevant court to give a relevant party to control order proceedings or relevant appeal proceedings a summary of evidence taken in his absence.

- (3) Rules of court made in exercise of the relevant powers must secure-
- (a) that in control order proceedings and relevant appeal proceedings the Secretary of State is required (subject to rules made under the following paragraphs) to disclose all relevant material;
  - (b) that the Secretary of State has the opportunity to make an application to the relevant court for permission not to disclose relevant material otherwise than to that court and persons appointed under paragraph 7;
  - (c) that such an application is always considered in the absence of every relevant party to the proceedings and of his legal representative (if he has one);
  - (d) that the relevant court is required to give permission for material not to be disclosed where it considers that the disclosure of the material would be contrary to the public interest;
  - (e) that, where permission is given by the relevant court not to disclose material, it must consider requiring the Secretary of State to provide the relevant party and his legal representative (if he has one) with a summary of the material;
  - (f) that the relevant court is required to ensure that such a summary does not contain information or other material the disclosure of which would be contrary to the public interest;
  - (g) that provision satisfying the requirements of sub-paragraph (4) applies where the Secretary of State does not have the relevant court's permission to withhold relevant material from a relevant party to the proceedings or his legal representative (if he has one), or is required to provide a summary of such material to that party or his legal representative.

(4) The provision that satisfies the requirements of this sub-paragraph is provision which, in a case where the Secretary of State elects not to disclose the relevant material or (as the case may be) not to provide the summary, authorises the relevant court-

(a) if it considers that the relevant material or anything that is required to be summarised might be of assistance to a relevant party in relation to a matter under consideration by that court, to give directions for securing that the matter is withdrawn from the consideration of that court; and

(b) in any other case, to ensure that the Secretary of State does not rely in the proceeding on the material or (as the case may be) on what is required to be summarised.

(5) In this paragraph "relevant material", in relation to any proceedings, means-

(a) any information or other material that is available to the Secretary of State and relevant to the matters under consideration in those proceedings; or

(b) the reasons for decisions to which the proceedings relate.

*Application for anonymity for controlled person*

5 (1) Rules of court made in exercise of the relevant powers may provide for-

(a) the making by the Secretary of State or the controlled person, at any time after a control order has been made, of an application to the court for an order requiring anonymity for that person; 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 control order 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 relevant appeal proceedings requiring anonymity for the controlled person.

(3) In sub-paragraphs (1) and (2) the references, in relation to a court, to an order requiring anonymity for the controlled person 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 controlled person or of any information that would tend to identify him.

#### *Use of advisers*

6 (1) In any control order proceedings the court may, if it thinks fit-

(a) call in aid one or more advisers appointed for the purpose by the Lord Chancellor; and

(b) hear and dispose of the proceedings with the assistance of the adviser or advisers.

(2) Rules of court may regulate the use of advisers in accordance with the power conferred by this paragraph.

(3) The Lord Chancellor may, out of money provided by Parliament, pay such remuneration, expenses and allowances to advisers appointed for the purposes of this paragraph as he may determine.

*Special representation in control order proceedings*

7 (1) The relevant law officer may appoint a person to represent the interests of a relevant party to relevant proceedings in any of those proceedings from which that party and his legal representative (if he has one) are excluded.

(2) In sub-paragraph (1) "relevant proceedings" means-

(a) control order proceedings; or

(b) proceedings on an appeal or further appeal relating to control order proceedings.

(3) A person may be appointed under this paragraph-

(a) in the case of an appointment by the Attorney General, only if he has a general legal qualification for the purposes of section 71 of the Courts and Legal Services Act 1990 (c. 41);

(b) in the case of an appointment by the Advocate General for Scotland, only if he is a person with appropriate rights of audience in Scotland; and

(c) in the case of an appointment by the Advocate General for Northern Ireland, only if he is a member of the Bar of Northern Ireland.

(4) In sub-paragraph (3) "person with appropriate rights of audience in Scotland" means-

(a) an advocate; or

(b) a solicitor with rights of audience by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46) in the Court of Session or the High Court of Justiciary.

(5) A person appointed under this paragraph is not to be responsible to the person whose interests he is appointed to represent.

(6) In this paragraph "the relevant law officer" means-

(a) in relation to control order proceedings in England and Wales or proceedings on an appeal or further appeal relating to such proceedings, the Attorney General;

(b) in relation to proceedings in Scotland or proceedings on an appeal or further appeal relating to such proceedings, the Advocate General for Scotland;

(c) in relation to proceedings in Northern Ireland or proceedings on an appeal or further appeal relating to such proceedings, the Advocate General for Northern Ireland.

(7) In relation to any time before the coming into force of section 27 of the Justice (Northern Ireland) Act 2002 (c. 26), references in this paragraph to the Advocate General for Northern Ireland are to have effect as references to the Attorney General for Northern Ireland.

*Effect of court orders*

8 (1) Where-

(a) a control order,

(b) the renewal of such an order, or

(c) an obligation imposed by such an order,

is quashed, the order, renewal or (as the case may be) obligation shall be treated for the purposes of section 9(1) and (2) as never having been made or imposed.

(2) A decision by the court or on appeal from the court-

(a) to quash a control order, the renewal of a control order or an obligation imposed by such an order, or

(b) to give directions to the Secretary of State in relation to such an order,

does not prevent the Secretary of State from exercising any power of his to make a new control order to the same or similar effect or from relying, in whole or in part, on the same matters for the purpose of making that new order.

*Interception evidence*

9 (1) Section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of interception matters from legal proceedings) is amended as follows.

(2) In subsection (1), after paragraph (d) insert-

"(da) any control order proceedings (within the meaning of the Prevention of Terrorism Act 2005) or any proceedings arising out of such proceedings;"

(3) In subsection (2) (persons disclosures to whom continue to be prohibited despite section 18), for "paragraph (e) or (f)" substitute "paragraphs (da) to (f)".

(4) In that subsection, before paragraph (a) insert-

"(za) in the case of any proceedings falling within paragraph (da) to-

(i) a person who, within the meaning of the Schedule to the Prevention of Terrorism Act 2005, is or was a relevant party to the control order proceedings; or

(ii) any person who for the purposes of any proceedings so falling (but otherwise than by virtue of an appointment under paragraph 7 of that Schedule) represents a person falling within sub-paragraph (i);".

*Allocation to Queen's Bench Division*

10 In paragraph 2 of Schedule 1 to the Supreme Court Act 1981 (c. 54) (business allocated to Queen's Bench Division), after sub-paragraph (b) insert-

"(ba) all control order proceedings (within the meaning of the Prevention of Terrorism Act 2005);".

*Interpretation of Schedule*

11 In this Schedule-

"legal representative", in relation to a relevant party to proceedings, does not include a person appointed under paragraph 7 to represent that party's interests;

"relevant appeal proceedings" has the meaning given by paragraph 1 (2);

"relevant court"-

(a) in relation to control order proceedings, means the court;  
and

(b) in relation to relevant appeal proceedings, means the Court of Appeal or the Inner House of the Court of Session;

"relevant party", in relation to control order proceedings or relevant appeal proceedings, means any party to the proceedings other than the Secretary of State;

"relevant powers" has the meaning given by paragraph 1(1).

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