SCOTTISH STATUTORY INSTRUMENTS

2005 No. 153

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Prevention of Terrorism Act 2005) 2005

Made - - - -	*15th March 2005*
Coming into force - -	*16th March 2005*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(**1**) and paragraph 4 of the Schedule to the Prevention of Terrorism Act 2005(**2**) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Prevention of Terrorism Act 2005) 2005 and shall come into force on 16th March 2005.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(**3**) shall be amended in accordance with the following sub-paragraphs.

(2) At the end there shall be inserted the following:–

"CHAPTER 89

Prevention of Terrorism Act 2005

Interpretation and application of this Chapter

89.1.—(1) In this Chapter—

"the Act of 2005" means the Prevention of Terrorism Act 2005;

(**1**) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c. 32, section 2(3) and by the Children (Scotland) Act 1995 c. 36, Schedule 4, paragraph 45.
(**2**) 2005 c. 2.
(**3**) S.I. 1994/1443, last amended by S.S.I. 2005/148.

"control order proceedings" has the same meaning as in section 11(6) of the Act of 2005;

"controlled person" has the same meaning as in section 15(1) of the Act of 2005 but, where the context so requires, also means an individual against whom the Secretary of State is proposing to make a non-derogating control order or an individual against whom a derogating control order is sought under section 4(1) of the Act of 2005;

"derogating control order" has the same meaning as in section 15(1) of the Act of 2005;

"non-derogating control order" has the same meaning as in section 15(1) of the Act of 2005;

"relevant appeal proceedings" has the same meaning as in paragraph 1(2) of the Schedule to the Act of 2005;

"relevant material" has the same meaning as in paragraph 4(5) of the Schedule to the Act of 2005;

"relevant party" has the same meaning as in paragraph 11 of the Schedule to the Act of 2005; and

"special representative" means a person appointed under paragraph 7 of the Schedule to the Act of 2005.

(2) This Chapter applies to control order proceedings and relevant appeal proceedings.

Control orders: petitions

89.2.—(1) The following shall be made by lodging a petition with the Deputy Principal Clerk:–

an application under section 3(1)(a) of the Act of 2005 for permission to make a non-derogating control order,

a reference under section 3(3)(a) of the Act of 2005 of a non-derogating control order,

an application under section 4(1) of the Act of 2005 for the making of a derogating control order.

(2) The following rules shall not apply to the petition:–

rule 4.3 (lodging of processes),

rule 4.4 (steps of process),

rule 4.5(1)(b) (copy inventory of productions to be sent to other parties),

rule 4.6 (intimation of steps of process),

rule 4.11 (documents not to be borrowed),

rule 4.12 (borrowing and returning documents),

rule 14.5 (first order in petitions),

rule 14.6 (period of notice for lodging answers),

rule 14.7 (intimation and service of petitions),

rule 14.8 (procedure where answers lodged),

rule 14.9 (unopposed petitions).

(3) Subject to rule 89.7 (permission not to disclose relevant material etc.), the petition shall include, in numbered paragraphs, statements of reasons—

(a) to support the making of the control order; and

(b) for imposing each of the obligations under the control order.

(4) Subject to rule 89.7, there shall be lodged with the petition—

(a) the productions of the Secretary of State;

(b) in the case of an application under section 3(1)(a) for permission to make a non-derogating control order, a copy of the proposed control order;

(c) in the case of a reference under section 3(3)(a) of the Act of 2005 of a non-derogating control order, a copy of the control order; and

(d) in the case of an application under section 4(1) of the Act of 2005 for the making of a derogating control order against an individual, a draft of the control order sought.

(5) Subject to rule 89.7, at the same time that the petition is lodged, a copy of the petition and copies of the productions and documents mentioned in paragraph (4) shall be served by the Secretary of State on the controlled person.

Preliminary hearings and initial diets

89.3.—(1) On receipt of a petition under rule 89.2 (control orders: petitions), the Deputy Principal Clerk shall—

(a) in the case of an application under section 3(1)(a) for permission to make a non-derogating control order or a reference under section 3(3)(a) of the Act of 2005 of a non-derogating control order, allocate an initial diet for the court's consideration to begin; and

(b) in the case of an application under section 4(1) of the Act of 2005 for a derogating control order, allocate a preliminary hearing under section 4(1)(a) of the Act of 2005.

(2) The Deputy Principal Clerk shall notify the date and time of a preliminary hearing to the Secretary of State and, unless the Lord Ordinary orders otherwise, shall use reasonable endeavours to notify the date and time of that hearing to the controlled person and any special representative.

(3) The fact that the controlled person or any special representative has not received notification of the preliminary hearing shall not affect the holding of that hearing.

(4) The Deputy Principal Clerk shall notify the date and time of an initial diet to the Secretary of State and, unless the Lord Ordinary orders otherwise, the controlled person and any special representative.

(5) The controlled person shall, not later than the date of the preliminary hearing or initial diet, lodge with the Deputy Principal Clerk and serve on the Secretary of State a copy of any answers and productions that are to be founded upon by the controlled person at the preliminary hearing or initial diet.

(6) Where a special representative is appointed for the purposes of a preliminary hearing or initial diet, he shall lodge with the Deputy Principal Clerk and serve on the Secretary of State a copy of any answers that are to be founded upon by the special representative at the preliminary hearing or initial diet.

(7) At a preliminary hearing or initial diet, the parties present shall state their proposals for further procedure in respect of any hearing in pursuance of directions under section 3(2)(c), (6)(b) or (c) or any full hearing under section 4(1)(b) of the Act of 2005, and the interlocutor of the Lord Ordinary giving directions for the carrying out of any such hearing shall include such order for further procedure as he thinks fit, subject, where applicable, to section 3(7) of the Act of 2005.

(8) Where a preliminary hearing or initial diet has been held in the absence of the controlled person the Deputy Principal Clerk shall serve a copy of the interlocutor of the Lord Ordinary on that person.

Applications for renewal, revocation or modification of derogating control orders

89.4.—(1) An application—

(a) under section 4(9) of the Act of 2005 for the renewal of a derogating control order; or

(b) under section 7(4) of the Act of 2005 for the revocation of a derogating control order or for the modification of obligations imposed by such an order,

shall be made by note.

(2) A note referred to in paragraph (1) shall be lodged with the Deputy Principal Clerk.

Appeals relating to non-derogating orders

89.5.—(1) Subject to paragraphs (2), (3) and (4) and to the modifications set out in rule 41.43 (application of Parts II and III to Part X), Part III of Chapter 41 (appeals to Lord Ordinary under statute)(**4**) shall apply to appeals under section 10 (appeals relating to non-derogating control orders) of the Act of 2005.

(2) An appeal under section 10 of the Act of 2005 shall be lodged with the Deputy Principal Clerk and served on the Secretary of State within 28 days after the date on which the controlled person received notice of—

(a) the control order that is the subject of the appeal, or

(b) the decision by the Secretary of State on an application for the revocation of the control order, or the modification of an obligation imposed by the control order.

(3) In a case where the Secretary of State has failed to determine an application for the revocation of the control order, or for the modification of an obligation imposed by such an order, any appeal under section 10 of the Act of 2005 shall be lodged—

(a) no earlier than 28 days before; and

(b) no later than 42 days after,

the date on which the application was made.

Appointment of special representatives

89.6.—(1) Subject to paragraph (2), the Secretary of State shall, upon—

(a) making any application or reference under the Act of 2005;

(b) making any motion in respect of control order proceedings or relevant appeal proceedings; or

(c) being served with a note of appeal, reclaiming motion or other application in respect of control order proceedings or relevant appeal proceedings,

give notice to the Advocate General.

(2) Paragraph (1) applies unless—

(a) the Secretary of State does not intend to—

(i) oppose the appeal, reclaiming motion or other application; or

(ii) make an application under rule 89.7 (permission not to disclose relevant material etc.); or

(b) a special representative has already been appointed to represent the interests of the controlled person in the proceedings.

(**4**) Part III was amended by S.I. 1994/2901 and S.I. 1996/1756.