



# National Security Act 2023

## 2023 CHAPTER 32

### PART 2

#### PREVENTION AND INVESTIGATION MEASURES

##### *Court scrutiny of imposition of measures*

#### **42 Prior permission of the court**

- (1) [This section](#) applies if the Secretary of State—
  - (a) makes the relevant decisions in relation to an individual, and
  - (b) makes an application to the court for permission to impose measures on the individual.
- (2) The application must set out a draft of the proposed [Part 2](#) notice.
- (3) The function of the court on the application is—
  - (a) to determine whether the relevant decisions of the Secretary of State are obviously flawed, and
  - (b) to determine whether to give permission to impose measures on the individual and (where applicable) whether to exercise the power of direction under [subsection \(9\)](#).
- (4) The court may consider the application—
  - (a) in the absence of the individual,
  - (b) without the individual having been notified of the application, and
  - (c) without the individual having been given an opportunity (if the individual was aware of the application) of making any representations to the court.
- (5) But that does not limit the matters about which rules of court may be made.
- (6) In determining the application, the court must apply the principles applicable on an application for judicial review.

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*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Cross Heading: Court scrutiny of imposition of measures. (See end of Document for details)*

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- (7) In a case where the court determines that a decision of the Secretary of State that condition A, condition B or condition C is met is obviously flawed, the court may not give permission under [this section](#).
- (8) In any other case, the court may give permission under [this section](#).
- (9) If the court determines that the Secretary of State's decision that condition D is met is obviously flawed, the court may (in addition to giving permission under [subsection \(8\)](#)) give directions to the Secretary of State in relation to the measures to be imposed on the individual.
- (10) In [this section](#) “relevant decisions” means the decisions that the following conditions are met—
- (a) condition A,
  - (b) condition B,
  - (c) condition C, and
  - (d) condition D.

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**Commencement Information**

- I1** S. 42 not in force at Royal Assent, see [s. 100\(1\)](#)  
**I2** S. 42 in force at 20.12.2023 by [S.I. 2023/1272, reg. 2\(b\)](#)

**43 Urgent cases: reference to the court etc**

[Schedule 8](#) makes provision about references to the court in urgent cases.

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**Commencement Information**

- I3** S. 43 not in force at Royal Assent, see [s. 100\(1\)](#)  
**I4** S. 43 in force at 20.12.2023 by [S.I. 2023/1272, reg. 2\(b\)](#)

**44 Directions hearing**

- (1) [This section](#) applies if the court—
- (a) gives permission under [section 42](#) for measures to be imposed on an individual, or
  - (b) confirms under [paragraph 4\(3\)](#) of [Schedule 8](#) (whether or not subject to [paragraph 4\(2\)](#) of that Schedule) a [Part 2](#) notice which imposes measures on an individual.
- (2) The court must, at the hearing where it gives the permission or confirms the notice, give directions for a further hearing (a “directions hearing”)—
- (a) which, unless the court otherwise directs (whether in those directions or subsequently), is to be held within the period of 7 days beginning with the relevant day, and
  - (b) which the individual is to have the opportunity to attend.

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- (3) In a case where [this section](#) applies because the court gives permission under [section 42](#), directions given under [subsection \(2\)](#) may not be served on the individual unless the [Part 2](#) notice has been served on that individual.
- (4) At the directions hearing, the court must give directions for a further hearing (a “review hearing”) in relation to the imposition of measures on the individual.
- (5) Directions under [subsection \(4\)](#) must provide for the review hearing to be held as soon as reasonably practicable.
- (6) In [this section](#) “relevant day” means—
  - (a) in a case falling within [subsection \(1\)\(a\)](#), the day on which the [Part 2](#) notice imposing the measures is served on the individual;
  - (b) in a case falling within [subsection \(1\)\(b\)](#), the day on which the court confirms the [Part 2](#) notice.

#### Commencement Information

- 15** S. 44 not in force at Royal Assent, see [s. 100\(1\)](#)  
**16** S. 44 in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(b\)](#)

## 45 Review hearing

- (1) On a review hearing held in compliance with directions under [section 44\(4\)](#), the function of the court is to review the decisions of the Secretary of State that the relevant conditions were met and continue to be met.
- (2) In doing so, the court must apply the principles applicable on an application for judicial review.
- (3) The court—
  - (a) must discontinue the review hearing if the individual requests the court to do so, and
  - (b) may discontinue the review hearing in any other circumstances.
- (4) The court may not discontinue the review hearing in accordance with [subsection \(3\)\(b\)](#) without giving the Secretary of State and the individual the opportunity to make representations.
- (5) The court has the following powers (and only those powers) on a review hearing—
  - (a) power to quash the [Part 2](#) notice;
  - (b) power to quash measures specified in the [Part 2](#) notice;
  - (c) power to give directions to the Secretary of State for, or in relation to—
    - (i) the revocation of the [Part 2](#) notice, or
    - (ii) the variation of measures specified in the [Part 2](#) notice.
- (6) If the court does not exercise any of its powers under [subsection \(5\)](#), the court must decide that the [Part 2](#) notice is to continue in force.
- (7) If the court exercises a power under [subsection \(5\)\(b\)](#) or [\(c\)\(ii\)](#), the court must decide that the [Part 2](#) notice is to continue in force subject to that exercise of that power.
- (8) In [this section](#) “relevant conditions” means—

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- (a) condition A,
- (b) condition B,
- (c) condition C, and
- (d) condition D.

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**Commencement Information**

- I7** S. 45 not in force at Royal Assent, see [s. 100\(1\)](#)
- I8** S. 45 in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(b\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the National Security Act 2023, Cross  
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