

2013 No. 1571 (L. 17)

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Civil Procedure (Amendment No. 5) Rules 2013

Approved by both Houses of Parliament

Made - - - - 26th June 2013

Laid before Parliament 27th June 2013

Coming into force in accordance with rule 1

The Lord Chancellor makes the following Rules in exercise of the power conferred by paragraph 3 of Schedule 3 to the Justice and Security Act 2013(a) (“the 2013 Act”) to make rules under section 1 of the Civil Procedure Act 1997(b) and sections 6(9) and (10), 7(6), 8, 10, 11 and 18(4) and (5) of the 2013 Act.

Before making these Rules, the Lord Chancellor has consulted the Lord Chief Justice of England and Wales in accordance with paragraph 3(3)(a) of Schedule 3 to the 2013 Act.

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment No. 5) Rules 2013 and come into force on the day after the day on which they are made.

2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(c).

Amendments to the Civil Procedure Rules 1998

3. In rule 1.2 (application by the court of the overriding objective), for “and 80.2” substitute “, 80.2 and 82.2”.

4. In rule 12.3—

(a) at the end of paragraph (3)(b), omit “or”; and

(b) after paragraph (3)(c), insert —

“; or

(a) 2013 c.18.

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

(c) S.I. 1998/3132. There are relevant amendments in S.I. 2011/2970, rules 3 and 4 and S.I. 2012/2208, rule 16.

(d) notice has been given under rule 82.21 of a person’s intention to make an application for a declaration under section 6 of the Justice and Security Act 2013 in relation to the proceedings, and that application has not been disposed of.”.

5. In rule 30.3, after paragraph (2) insert—

“(3) Where in proceedings before a county court the court considers that there is a real possibility that a party would in the course of the proceedings be required to disclose material the disclosure of which would be damaging to the interests of national security, the court must transfer the proceedings to the High Court.”.

6. After Part 81, insert Part 82 (closed material procedure) as set out in the Schedule to these Rules.

Chris Grayling
Lord Chancellor

26th June 2013

SCHEDULE

Rule 6

“PART 82

CLOSED MATERIAL PROCEDURE

Contents of this Part

	SECTION I APPLICATION OF THIS PART
82.1	Scope and interpretation
82.2	Modification to the overriding objective
82.3	Rules to apply subject to this Part
	SECTION II GENERAL PROVISIONS
82.4	Scope of this Section
82.5	Case management
82.6	Hearings in private
82.7	Notification of hearings
82.8	Proceedings which must be determined at a hearing
82.9	Appointment of a special advocate
82.10	Functions of a special advocate
82.11	Special advocate: communicating about proceedings
82.12	Evidence in proceedings to which this Part applies
82.13	Sensitive material
82.14	Consideration of closed material application or of objection to special advocate’s communication
82.15	Failure to comply with directions
82.16	Judgments

82.17	Application by the Secretary of State or relevant person for reconsideration of decision
82.18	Supply of court documents
	SECTION III APPLICATIONS UNDER SECTION 6(2) OF THE ACT
82.19	Scope of this Section
82.20	Possible application for declaration under section 6(2) of the Act by Secretary of State: notification to Secretary of State if not a party
82.21	Notification of intention to make application for a declaration
82.22	Application for a declaration
82.23	Directions for hearing of application
82.24	Notification by applicant following hearing of application
82.25	Secretary of State to be joined where declaration made
82.26	Directions following declaration
	SECTION IV REVIEW AND REVOCATION OF DECLARATIONS MADE UNDER SECTION 6 OF THE ACT
82.27	Scope of this Section
82.28	Possible revocation of declaration: court's own motion
82.29	Application for revocation of declaration
82.30	Formal review of declaration
	SECTION V REVIEW, UNDER SECTION 18 OF THE ACT, OF A CERTIFICATE UNDER SECTION 17(3)(e) OF THE ACT
82.31	Review of certification
	SECTION VI APPEALS TO THE COURT OF APPEAL
82.32	Modification of Part 52 (appeals)

SECTION I

Application of this Part

Scope and interpretation

82.1.—(1) This Part contains rules—

(a) about—

- (i) applications under sections 6(2), 7(4) and 18(1) of the Justice and Security Act 2013;
- (ii) closed material applications in section 6 proceedings;
- (iii) section 6 proceedings; and

- (b) about appeals to the Court of Appeal where there have been proceedings on or in relation to any matter within sub-paragraph (a) in the High Court.
- (2) Subject to paragraph (3), in this Part—
- (a) “the Act” means the Justice and Security Act 2013;
 - (b) “closed material application” means an application of the kind mentioned in section 8(1)(a) of the Act;
 - (c) “legal representative” is to be construed in accordance with section 14(1) of the Act;
 - (d) “relevant person” is to be construed in accordance with section 14(1) of the Act;
 - (e) “section 6 proceedings” is to be construed in accordance with section 14(1) of the Act;
 - (f) “sensitive material” has the meaning given by section 6(11) of the Act;
 - (g) “special advocate” means a person appointed under section 9(1) of the Act;
 - (h) “specially represented party” means a party whose interests a special advocate represents;
- (3) In relation to proceedings arising by virtue of section 18 of the Act (review of certification)—
- (a) a reference to the relevant person is to be read as a reference to the Secretary of State; and
 - (b) a reference to the interests of national security includes a reference to the interests of the international relations of the United Kingdom.

Modification to the overriding objective

- 82.2.**—(1) Where any of the rules in this Part applies, the overriding objective in Part 1, and so far as possible any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).
- (2) The court must ensure that information is not disclosed in a way which would be damaging to the interests of national security.
- (3) Subject to paragraph (2), the court must satisfy itself that the material available to it enables it properly to determine proceedings.

Rules to apply subject to this Part

- 82.3.**—(1) Subject to paragraph (2), in relation to proceedings to which this Part applies, these Rules apply subject to the rules in this Part.
- (2) Part 31 (disclosure and inspection of documents) applies to proceedings to which this Part applies, subject only to rule 82.2 and the court’s permission for material not to be disclosed otherwise than to—
- (a) the court;
 - (b) any person appointed as a special advocate; and
 - (c) where the Secretary of State is not the relevant person but is a party to the proceedings, the Secretary of State.

SECTION II

General provisions

Scope of this Section

- 82.4.** This Section applies, except where otherwise indicated, to the proceedings mentioned in rule 82.1.

Case management

82.5. Proceedings to which this Section applies are to be treated as allocated (or, as the case may be, re-allocated) to the multi-track.

Hearings in private

82.6.—(1) If the court considers it necessary for any party and that party's legal representative to be excluded from any hearing or part of a hearing in order to secure that information is not disclosed where disclosure would be damaging to the interests of national security, it must—

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

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

Notification of hearings

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

- (a) every party, whether or not entitled to attend that hearing; and
- (b) the special advocate or those instructing the special advocate.

Proceedings which must be determined at a hearing

82.8. The following proceedings must, unless the court directs otherwise, be determined at a hearing—

- (a) an application by the Secretary of State under section 6(2) of the Act for a declaration;
- (b) a closed material application;
- (c) a review of the court's own motion under section 7 of a declaration made under section 6 of the Act;
- (d) a formal review under section 7(3) of the Act of a declaration made under section 6 of the Act;
- (e) an application under section 7 of the Act for revocation of a declaration made under section 6 of the Act;
- (f) an application under section 18(1) of the Act to have a certificate issued under section 17(3)(e) of the Act set aside;
- (g) an appeal to the Court of Appeal from a decision or order of the High Court made in any of the proceedings mentioned in paragraphs (a) to (f) above.

Appointment of a special advocate

82.9.—(1) Subject to paragraphs (2) and (3), where—

- (a) the Secretary of State decides to make an application under section 6(2) of the Act for a declaration; or
- (b) the Secretary of State receives written notice under rule 82.21 (notification of intention to make application for a declaration) that a party other than the Secretary of State intends to make such an application; or

- (c) the Secretary of State receives written notice under rule 82.31 (review of certification) of an application under section 18(1) of the Act to have a certificate issued under section 17(3)(e) of the Act set aside,

the Secretary of State must immediately give notice of the proceedings to the Attorney General (who, under section 9(1) of the Act, has the power to appoint a special advocate).

(2) Paragraph (1) applies unless a special advocate has already been appointed to represent the interests of the specially represented party in the proceedings and that special advocate is not prevented from communicating with that party by virtue of rule 82.11 (special advocate: communicating about proceedings).

(3) Paragraph (1) applies whether the proceedings are in the High Court or the Court of Appeal.

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

Functions of a special advocate

82.10. The functions of a special advocate are to represent the interests of a specially represented party by—

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

Special advocate: communicating about proceedings

82.11.—(1) The special advocate may communicate with the specially represented party or the specially represented party's legal representative at any time before a relevant person serves sensitive material on the special advocate.

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

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

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

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

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

- (a) the court must notify the relevant person, and (where the relevant person is not the Secretary of State) the Secretary of State, of the request and of the content of the proposed communication and the form in which it is proposed to be made; and
 - (b) the relevant person or the Secretary of State or each of them (where each wishes to object) must, within a period specified by the court, file with the court and serve on the special advocate notice of any objection which the relevant person or the Secretary of State has to the proposed communication or to the form in which it is proposed to be made.
- (6) Paragraph (2) does not prohibit the specially represented party from communicating with the special advocate after the relevant person has served material on the special advocate, but—
- (a) the specially represented party may only communicate with the special advocate in writing through the specially represented party’s legal representative; and
 - (b) the special advocate must not reply to the communication other than in accordance with directions of the court, except that the special advocate may without such directions send a written acknowledgment of receipt to the specially represented party’s legal representative.

Evidence in proceedings to which this Part applies

- 82.12.**—(1) Subject to the other rules in this Part, the evidence of a witness may be given either—
- (a) orally before the court; or
 - (b) in writing, in which case it must be given in such manner and at such time as the court directs.
- (2) The court may also receive evidence in documentary or any other form.
- (3) The court may receive evidence that would not, but for this rule, be admissible in a court of law.
- (4) Every party is entitled to adduce evidence and to cross-examine witnesses during any hearing or part of a hearing from which that party and that party’s legal representatives are not excluded.
- (5) A special advocate is entitled to adduce evidence and to cross-examine a witness only during a hearing or part of a hearing from which the specially represented party and the specially represented party’s legal representatives are excluded.
- (6) The court may require a witness to give evidence on oath.

Sensitive material

- 82.13.**—(1) The relevant person—
- (a) must apply to the court for permission to withhold sensitive material from a specially represented party or the specially represented party’s legal representative in accordance with this rule; and
 - (b) may not rely on sensitive material at a hearing on notice unless a special advocate has been appointed to represent the interests of the specially represented party.
- (2) The relevant person must file with the court and, at such time as the court directs, serve on the special advocate—
- (a) the sensitive material; and
 - (b) a statement of the relevant person’s reasons for withholding that material from the specially represented party and the specially represented party’s legal representatives.
- (3) The relevant person may at any time amend or supplement material filed under this rule, but only with—

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

Consideration of closed material application or of objection to special advocate’s communication

82.14.—(1) This rule applies where the relevant person or, as the case may be, the Secretary of State has—

- (a) applied under rule 82.13 (sensitive material) for permission to withhold sensitive material; or
- (b) objected under rule 82.11(5)(b) (special advocate: communicating about proceedings) to a proposed communication by the special advocate.

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

- (a) the special advocate gives notice that he or she does not challenge the application or objection;
- (b) the court has previously, in determining the application under section 6(2) of the Act for a declaration, found that the first condition in section 6 of the Act is met in relation to the same or substantially the same material and is satisfied that it would be just to give permission without a hearing;

(c) the court has previously considered—

- (i) an application under rule 82.13(1) for permission to withhold the same or substantially the same material; or
- (ii) an objection under rule 82.11(5)(b) to the same or substantially the same proposed communication; and

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

(d) the relevant person, the Secretary of State and the special advocate consent to the court deciding the application or objection without a hearing.

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

- (a) 14 days after the date on which the relevant person or the Secretary of State serves on the special advocate the notice under rule 82.11(5)(b) or the material under rule 82.13(2), or
- (b) such other period as the court may direct.

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

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

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

(6) Where the court has, in determining an application under section 6(2) of the Act for a declaration, found that the first condition in section 6 of the Act is met in relation to any material, it may give permission to withhold that material without a hearing in relation to that material, whether or not a hearing is required in relation to any other material.

(7) Where the court gives permission to the relevant person to withhold sensitive material, the court—

- (a) must consider whether to direct the relevant person to serve a summary of that material on the specially represented party and the specially represented party's legal representative; but
- (b) must ensure that any such summary does not contain material the disclosure of which would be damaging to the interests of national security.

(8) If the court is satisfied that—

- (a) the relevant person does not intend to rely on sensitive material, and
- (b) that material does not adversely affect the relevant person's case or support the case of another party to the proceedings,

the court may direct that the relevant person must not rely in the proceedings on that material, without the court first requiring the relevant person to serve a summary of that material on the specially represented party and the specially represented party's legal representative.

(9) Where the court has not given permission to the relevant person to withhold sensitive material from, or has directed the relevant person to serve a summary of that material on, the specially represented party and the specially represented party's legal representative—

- (a) the relevant person shall not be required to serve that material or summary; but
- (b) if the relevant person does not do so, at a hearing on notice the court may—
 - (i) if it considers that the material or anything that is required to be summarised might adversely affect the relevant person's case or support the case of another party to the proceedings, direct that the relevant person is not to rely on such points in the relevant person's case, or that the relevant person makes such concessions or takes such other steps as the court may direct; and
 - (ii) in any other case, direct that the relevant person must not rely in the proceedings on that material or (as the case may be) on what is required to be summarised.

(10) The court must give permission to the relevant person to withhold sensitive material where it considers that disclosure of that material would be damaging to the interests of national security.

Failure to comply with directions

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

- (a) the respect in which that person has failed to comply with the direction;
- (b) a time limit for complying with the direction; and
- (c) that the court may proceed to determine the proceedings before it on the material before it if that person fails to comply with the direction within that time limit.

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

Judgments

82.16.—(1) Where the court gives judgment in any proceedings to which this Section applies, it may withhold any, or any part, of its reasons if and to the extent that it is not possible to give those reasons without disclosing information the disclosure of which would be damaging to the interests of national security.

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

Application by the Secretary of State or relevant person for reconsideration of decision

82.17.—(1) If the court proposes, in any proceedings to which this Section applies, to serve on a specially represented party—

- (a) notice of any order or direction made or given in the absence of the Secretary of State or, if the relevant person is not the Secretary of State, the absence of the relevant person; or
- (b) any written judgment;

then before the court serves any such notice or judgment on the specially represented party, it must first serve notice on the Secretary of State and, if the relevant person is not the Secretary of State, on the relevant person, of its intention to do so.

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

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

would cause information to be disclosed where such disclosure would be damaging to the interests of national security.

(3) Where the Secretary of State or relevant person makes an application under paragraph (2), the Secretary of State or relevant person must at the same time serve on the special advocate—

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

(4) Rule 82.14 (consideration of closed material application or of objection to special advocate’s communication), except for paragraphs (6) to (8) of that rule, applies with any necessary modifications to the consideration of an application under paragraph (2) of this rule.

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

Supply of court documents

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

SECTION III

Applications under section 6(2) of the Act

Scope of this Section

82.19. This Section contains rules about applications under section 6(2) of the Act (application for a declaration that the proceedings are proceedings in which a closed material application may be made).

Possible application for declaration under section 6(2) of the Act by Secretary of State: notification to Secretary of State if not a party

82.20.—(1) This rule applies where the Secretary of State is not a party to relevant civil proceedings but—

- (a) it appears to—
 - (i) a party to those proceedings; or
 - (ii) the court,that the party may be required to disclose material the disclosure of which would be damaging to the interests of national security, and
- (b) either—
 - (i) the party does not intend to make an application under section 6(2) of the Act for a declaration; or
 - (ii) the court does not consider it appropriate to make such a declaration of its own motion.

(2) Where this rule applies by virtue of paragraph (1)(a)(i) and (b)(i)—

- (a) the party must—
 - (i) notify the Secretary of State and the court in writing; and
 - (ii) not disclose the material in question unless and to the extent that the court directs; and
- (b) the court must on receiving notification give such directions as appear necessary pending the Secretary of State's response.

(3) Where this rule applies by virtue of paragraph (1)(a)(ii) and (b)(ii), the court must—

- (a) direct the party in question not to disclose the material in question unless and to the extent the court directs otherwise;
- (b) notify the Secretary of State in writing; and
- (c) give such directions as appear necessary pending the Secretary of State's response.

(4) Within 14 days of being notified in accordance with paragraph (2) or (3), the Secretary of State must respond in writing to the court—

- (a) confirming that the Secretary of State intends to apply under section 6(2) of the Act for a declaration;
- (b) confirming that the Secretary of State does not intend to apply for such a declaration; or
- (c) requesting further time to consider whether to apply for such a declaration.

(5) The court—

- (a) may stay the proceedings either on application by a party or of its own motion where the Secretary of State has been notified under paragraph (2) or (3); and
- (b) must stay the proceedings where the Secretary of State responds in accordance with paragraph (4)(a) or (c).

(6) Any stay may be subject to conditions, including a condition that the application must be made, or confirmation given that no application will be made, within a time specified by the court.

Notification of intention to make application for a declaration

82.21.—(1) Any person who intends to make an application under section 6(2) of the Act for a declaration—

- (a) must, at least 14 days before making the application, serve written notice of that intention on the court and on every other party to the relevant civil proceedings and (if the Secretary of State is not a party) on the Secretary of State;
- (b) may at any time apply to the court for the relevant civil proceedings to which the declaration would relate to be stayed pending—
 - (i) the application; or
 - (ii) the person's consideration of whether to make an application.

(2) The court may stay the relevant civil proceedings to which the declaration would relate on an application under paragraph (1)(b) or of its own motion.

(3) Any stay may be subject to conditions, including a condition that the application must be made, or confirmation given that no application will be made, within a time specified by the court.

Application for a declaration

82.22.—(1) An application under section 6(2) of the Act for a declaration must be made by the applicant filing with the court—

- (a) a statement of reasons to support the application and any additional written submissions;
- (b) material in relation to which the court is asked to find that the first condition in section 6 of the Act is met;
- (c) the details of any special advocate already appointed under rule 82.9 (appointment of a special advocate).

(2) Where the applicant is the Secretary of State, the statement of reasons required by paragraph (1)(a) must include the Secretary of State's reasons for not making, or not advising another person to make, a claim for public interest immunity in relation to the material on which the application would be based.

Directions for hearing of an application

82.23.—(1) When a party to relevant civil proceedings or (if the Secretary of State is not a party) the Secretary of State makes an application under section 6(2) of the Act for a declaration, the court must serve notice of the application on—

- (a) all other parties and (if the Secretary of State is neither a party nor the applicant) the Secretary of State;
- (b) the legal representatives of all other parties and (where relevant) the Secretary of State; and
- (c) the special advocate,

and must give directions for a directions hearing unless it considers that the application can be determined on the papers, in which case it must give directions as it considers appropriate.

(2) Any directions hearing shall take place in the absence of the specially represented party and the specially represented party's legal representative.

(3) At the directions hearing the court must give directions—

- (a) for the hearing of the application; and
- (b) specifying a date and time by which the parties and the special advocate must file and serve any written evidence or written submissions.

(3) The hearing of the application shall take place in the absence of the specially represented party and the specially represented party's legal representative.

Notification by applicant following hearing of application

82.24.—(1) When the court has determined an application made under section 6(2) of the Act, the applicant must within 7 days of that determination serve written notice of the outcome of the application on every other party to the proceedings and (if the Secretary of State is not a party) on the Secretary of State.

(2) The notice must be limited to stating whether the application was granted or refused.

Secretary of State to be joined where declaration made

82.25. If the court makes a declaration under section 6 of the Act and the Secretary of State is not already a party to the proceedings in relation to which the declaration is made, the court must order the Secretary of State to be joined as a party to those proceedings, unless the Secretary of State does not wish to be joined and notifies the court in writing accordingly.

Directions following declaration

82.26.—(1) If the court makes a declaration under section 6 of the Act, it must give directions for the further management of the case, or for a directions hearing, or for both.

(2) The court must, either when giving directions under paragraph (1) or at the directions hearing (if it directs such a hearing), give directions—

- (a) for a hearing of a closed material application; and
- (b) specifying a date and time by which the parties and special advocate must file and serve any written evidence or written submissions,

unless it considers that the application can be determined on the papers, in which case it must give directions as it considers appropriate.

(3) Directions given under this rule may include directions for—

- (a) the filing by any party of—
 - (i) a statement of case; or
 - (ii) an amended statement of case; and
- (b) a hearing of a closed material application in relation to such a statement of case.

SECTION IV

Review and revocation of declarations made under section 6 of the Act

Scope of this Section

82.27. This Section contains rules about—

- (a) revocation—
 - (i) of the court's own motion; or
 - (ii) on application,of a declaration made under section 6 of the Act; and
- (b) the court's formal review of such a declaration.

Possible revocation of declaration: court's own motion

82.28.—(1) This rule applies if the court at any time considers that a declaration made under section 6 of the Act may no longer be in the interests of the fair and effective administration of justice in the proceedings.

(2) The court must in writing—

- (a) notify the parties (and the Secretary of State if not a party) and the special advocate that it is considering whether to revoke the declaration; and
 - (b) invite them to make submissions.
- (3) Each party (and the Secretary of State if not a party) and the special advocate must within 28 days of the date of notification under paragraph (2) file a response either—
- (a) containing written submissions supporting or opposing revocation of the declaration and giving reasons; or
 - (b) confirming that the party (or the Secretary of State, or the special advocate, as appropriate) does not wish to make any submissions.
- (4) The court may, on receipt of the responses under paragraph (3), either—
- (a) give directions—
 - (i) for a hearing to determine whether the declaration should be revoked; and
 - (ii) specifying a date and time by which the parties (and Secretary of State if not a party) and special advocate must file and serve any written evidence or written submissions; or
 - (b) determine the issue without a hearing.
- (5) A hearing under this rule shall take place in the absence of the specially represented party and the specially represented party's legal representative.

Application for revocation of declaration

82.29.—(1) An application under section 7(4)(a) of the Act for revocation of a declaration made under section 6 of the Act must be made by the applicant filing with the court—

- (a) a statement of reasons to support the application; and
- (b) any written submissions.

(2) When such an application has been made, the court must serve notice of the application on—

- (a) all other parties and (if the Secretary of State is neither a party nor the applicant) the Secretary of State;
- (b) the legal representatives of those parties and (where relevant) the Secretary of State; and
- (c) the special advocate,

and must give directions for a hearing unless it considers that the application can be determined on the papers, in which case it may give directions as it considers appropriate.

(3) Each party (and the Secretary of State if neither a party nor the applicant) and the special advocate must within 28 days of the date of notification under paragraph (2) file a response either—

- (a) containing written submissions supporting or opposing revocation of the declaration and giving reasons; or
- (b) confirming that the party (or the Secretary of State, or the special advocate, as appropriate) does not wish to make any submissions.

(4) The court must, after receipt of the responses under paragraph (3), either—

- (a) give directions—
 - (i) for a hearing to determine whether the declaration should be revoked; and
 - (ii) specifying a date and time by which the parties (and Secretary of State if not a party) and special advocate must file and serve any written evidence or written submissions; or
- (b) determine the issue without a hearing.

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

Review of declaration: formal review

82.30.—(1) Once the pre-trial disclosure exercise in proceedings where there has been a declaration under section 6 of the Act has been completed, the court must review whether the declaration continues to be in the interests of the fair and effective administration of justice in the proceedings.

(2) If the court considers that the declaration may no longer be in the interests of the fair and effective administration of justice in the proceedings, it must proceed in accordance with paragraphs (2) to (5) of rule 82.28.

(3) If the court considers that the declaration continues to be in the interests of the fair and effective administration of justice in the proceedings, it may so declare without a hearing.

(4) For the purposes of section 7(3) of the Act and this rule, the pre-trial disclosure exercise in the proceedings is to be considered to have been completed—

- (a) where the claim is one to which rule 31.5(2) does not apply, when disclosure equivalent to standard disclosure has been completed in accordance with this Part;
- (b) where the claim is one to which rule 31.5(2) applies, when disclosure equivalent to that directed under rule 31.5(7) and (8) has been completed in accordance with this Part.

SECTION V

Review, under section 18 of the Act, of a certificate under section 17(3)(e) of the Act

Review of certification

82.31.—(1) An application under section 18(1) of the Act to have a certificate issued under section 17(3)(e) of the Act set aside must be made by the applicant filing with the court—

- (a) a statement of reasons to support the application; and
- (b) any written submissions.

(2) The court with which the documents in paragraph (1)(a) and (b) must be filed is—

- (a) the High Court, if the court seized of the proceedings in relation to which the certificate was issued is the High Court or county court; or
- (b) the Court of Appeal, if the court seized of the proceedings in relation to which the certificate was issued is the Court of Appeal.

(3) When such an application has been made, the court must serve notice of the application on the Secretary of State and the Secretary of State's legal representative, and on the special advocate when a special advocate has been appointed pursuant to rule 82.9.

(4) The Secretary of State must, within 28 days of the date of notification under paragraph (3), file, and serve upon the special advocate, a response either—

- (a) containing written submissions opposing the setting aside of the certificate and giving reasons; or
- (b) confirming that the Secretary of State does not oppose the setting aside of the certificate.

(5) The special advocate must within 28 days of being served under paragraph (4) file, and serve on the Secretary of State, a response either—

- (a) containing written submissions supporting the setting aside of the certificate and giving reasons; or
- (b) confirming that the special advocate does not wish to make any submissions.

- (6) The court must, after receipt of the responses under paragraphs (4) and (5), either—
- (a) give directions—
 - (i) for a hearing to determine whether the certificate should be revoked; and
 - (ii) specifying a date and time by which the parties (and the Secretary of State if not a party) and special advocate must file and serve any written evidence or written submissions; or
 - (b) determine the issue without a hearing.
- (7) A hearing under this rule shall take place in the absence of the specially represented party and the specially represented party’s legal representative.

SECTION VI

Appeals to the Court of Appeal

Modification of Part 52 (appeals)

- 82.32.**—(1) Part 52 (appeals) applies to an appeal to the Court of Appeal—
- (a) against an order of the High Court on or in relation to an application under section 6(2), 7(4) or 18(1) of the Act, or section 6 proceedings;
 - (b) where the order under appeal was not made on or in relation to a matter within sub-paragraph (a) but the appeal proceedings involve such a matter or are section 6 proceedings.
- (2) Paragraph (1) is subject to—
- (a) rule 82.2;
 - (b) Section 2 of this Part; and
 - (c) paragraph (3) of this rule.
- (3) The appellant must serve a copy of the appellant’s notice on any special advocate.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Civil Procedure Rules 1998 (“the CPR”) for the purpose of implementing Part 2 of the Justice and Security Act 2013(a) (“the 2013 Act”) by—

- amending rule 1.2 (application by the court of the overriding objective), so that it is subject to rule 82.2 (modification to the overriding objective);
- amending rule 12.3 to ensure that judgment in default is not entered where the reason for a defence not having been served is that the process of considering whether a declaration under section 6 of the 2013 Act should be applied for or made is still under way;
- amending rule 30.3 to provide for transfer to the High Court of proceedings in the county court in which sensitive material is in issue; and
- inserting a new Part 82 containing rules about proceedings in which sensitive material is in issue and it is necessary to ensure that such material is not disclosed where such disclosure would be damaging to the interests of national security. This includes modification of the application of other Parts of the CPR for the purposes of those proceedings).

The 2013 Act makes provision, in Part 2, to allow the use in civil proceedings of “closed material procedure” for the admission and hearing of, and argument in relation to, national security-

(a) 2013 c.18

sensitive material. In such a procedure, the sensitive material is withheld from the other party and is disclosed only to the court and to a special advocate appointed to represent that other party's interests. Part 2 of the Act provides for a process in which, if it appears that a party to proceedings may be required in the course of the proceedings to disclose sensitive material, the court may make a declaration that the proceedings are proceedings in which a "closed material application" may be made to the court. A closed material application is an application for permission to disclose sensitive material only to the court and special advocate. The initial declaration acts as a gateway to enable closed material procedure to be used where necessary thereafter in the proceedings, but with those parts of the proceedings where sensitive material is not in issue being undertaken in the normal way.

Section I of Part 82 contains rules about the scope, interpretation and application of the Part. Rule 80.2 modifies the overriding objective for the purposes of Part 82 by placing a duty on the court to ensure that information is not disclosed where such disclosure would be damaging to the interests of national security and by requiring that the overriding objective be read and given effect in a way which is compatible with that duty. This, and the rest of Part 82, is, however, subject to section 14(2) of the 2013 Act, which provides that nothing in the relevant sections of the 2013 Act or in rules made by virtue of them is to be read as requiring the court to act in a manner inconsistent with Article 6 of the European Convention on Human Rights.

Section II of Part 82 contains general provisions applying to all proceedings to which Part 82 applies. These include provision for—

- hearings, including the circumstances in which the court is to conduct "closed" hearings (rules 82.6 to 82.8);
- notifying the Attorney General of proceedings, the appointment and functions of a special advocate and the special advocate's communications with others (rules 82.9 to 82.11);
- modification of rules of evidence (rule 82.12);
- the procedure for closed material applications and objections to proposed communications by the special advocate with the specially represented party (rules 82.13 to 82.15);
- the court to withhold (so that they are given only to the Secretary of State (or, if the person who has to disclose sensitive material is not the Secretary of State, that other "relevant person") and special advocate, but not to the specially represented party) any, or any part, of its reasons when giving judgment, if it is not possible to give reasons without disclosing information in a way which would be damaging to the interests of national security (rule 82.16);
- applications by the Secretary of State for the court to reconsider the terms of any order or decision given in the Secretary of State's absence, or the terms of any judgment, to prevent the disclosure of information in a way which would be damaging to the interests of national security (rule 82.17).

Section III of Part 82 contains rules about the making and consideration of an application for a declaration that the proceedings are proceedings in which a "closed material application" may be made to the court, including provision to ensure that the Secretary of State, where not a party to the proceedings, is always notified of the possibility that such an application may be made because sensitive material is in issue, and that the Secretary of State is joined as a party (where not already a party) when a declaration is made.

Section IV of Part 82 contains rules about the review and revocation of declarations that proceedings are proceedings in which a closed material application may be made to the court. Such review and revocation may be of the court's own motion, or on application, and a formal review must take place once the pre-trial disclosure exercise in the proceedings (defined in rule 82.30) has concluded.

Section V of Part 82 contains a rule about the making and consideration of an application (under section 18 of the 2013 Act) to have set aside a certificate under section 17(3)(e) of the Act (that is, a certificate by the Secretary of State in relation to proceedings seeking disclosure of information

in proceedings under the court's *Norwich Pharmacal* jurisdiction or any similar jurisdiction, that certain information is sensitive information which should not be ordered to be disclosed).

Section VI of Part 82 contains a rule modifying the application of Part 52 of the CPR (appeals) in relation to appeals to the Court of Appeal against an order on or in relation to an application under section 6, 7 or 18 of the Act, or in "section 6 proceedings" (proceedings where there has been a declaration that the proceedings are proceedings in which a closed material application may be made to the court, or proceedings treated as such proceedings by any enactment), or where the appeal proceedings involve such a matter or are themselves section 6 proceedings.

© Crown copyright 2017

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2013 No. 1571 (L. 17)

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Civil Procedure (Amendment No. 5) Rules 2013

£6.00

60606 08/2017 19585

ISBN 978-0-11-130025-1



9 780111 300251