



Justice and Security Act 2013

2013 CHAPTER 18

PART 2

DISCLOSURE OF SENSITIVE MATERIAL

Closed material procedure: general

6 Declaration permitting closed material applications in proceedings

- (1) The court seized of relevant civil proceedings may make a declaration that the proceedings are proceedings in which a closed material application may be made to the court.
- (2) The court may make such a declaration—
 - (a) on the application of—
 - (i) the Secretary of State (whether or not the Secretary of State is a party to the proceedings), or
 - (ii) any party to the proceedings, or
 - (b) of its own motion.
- (3) The court may make such a declaration if it considers that the following two conditions are met.
- (4) The first condition is that—
 - (a) a party to the proceedings would be required to disclose sensitive material in the course of the proceedings to another person (whether or not another party to the proceedings), or
 - (b) a party to the proceedings would be required to make such a disclosure were it not for one or more of the following—
 - (i) the possibility of a claim for public interest immunity in relation to the material,
 - (ii) the fact that there would be no requirement to disclose if the party chose not to rely on the material,

Status: This is the original version (as it was originally enacted).

- (iii) section 17(1) of the Regulation of Investigatory Powers Act 2000 (exclusion for intercept material),
 - (iv) any other enactment that would prevent the party from disclosing the material but would not do so if the proceedings were proceedings in relation to which there was a declaration under this section.
- (5) The second condition is that it is in the interests of the fair and effective administration of justice in the proceedings to make a declaration.
- (6) The two conditions are met if the court considers that they are met in relation to any material that would be required to be disclosed in the course of the proceedings (and an application under subsection (2)(a) need not be based on all of the material that might meet the conditions or on material that the applicant would be required to disclose).
- (7) The court must not consider an application by the Secretary of State under subsection (2)(a) unless it is satisfied that the Secretary of State has, before making the application, considered whether to make, or advise another person to make, a claim for public interest immunity in relation to the material on which the application is based.
- (8) A declaration under this section must identify the party or parties to the proceedings who would be required to disclose the sensitive material (“a relevant person”).
- (9) Rules of court may—
- (a) provide for notification to the Secretary of State by a party to relevant civil proceedings, or by the court concerned, of proceedings to which a declaration under this section may be relevant,
 - (b) provide for a stay or sist of relevant civil proceedings (whether on an application by a party to the proceedings or by the court concerned of its own motion) where a person is considering whether to apply for a declaration under this section,
 - (c) provide for the Secretary of State, if not a party to proceedings in relation to which there is a declaration under this section or proceedings for or about such a declaration, to be joined as a party to the proceedings.
- (10) Rules of court must make provision—
- (a) requiring a person, before making an application under subsection (2)(a), to give notice of the person’s intention to make an application to every other person entitled to make such an application in relation to the relevant civil proceedings,
 - (b) requiring the applicant to inform every other such person of the outcome of the application.
- (11) In this section—
- “closed material application” means an application of the kind mentioned in section 8(1)(a),
 - “relevant civil proceedings” means any proceedings (other than proceedings in a criminal cause or matter) before—
 - (a) the High Court,
 - (b) the Court of Appeal,
 - (c) the Court of Session, or
 - (d) the Supreme Court,
 - “sensitive material” means material the disclosure of which would be damaging to the interests of national security.