STATUTORY RULES OF NORTHERN IRELAND

2013 No. 175

COURT OF JUDICATURE, NORTHERN IRELAND

The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2013

Made - - - - *26th June 2013*

Laid before Parliament *27th June 2013*

Coming into operation in accordance with rule 1

Approved by Parliament

The Lord Chancellor makes the following Rules in exercise of the power conferred by paragraph 3(6)(a) of Schedule 3 to the Justice and Security Act 2013(**1**) ("the 2013 Act") to make rules under section 55 and 55A of the Judicature (Northern Ireland) Act 1978(**2**) 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 Northern Ireland in accordance with paragraph 3(3)(b) of Schedule 3 to the 2013 Act.

Citation, commencement and interpretation

1. These Rules may be cited as the Rules of the Court of Judicature (Northern Ireland) (Amendment) 2013 and shall come into operation on the day after the day on which they are made.

2. In these Rules, a reference to an Order or a rule by number alone means the Order or rule so numbered in the Rules of the Court of Judicature (Northern Ireland) 1980 (**3**).

Amendments to the Rules of the Court of Judicature (Northern Ireland) 1980

3. In the Arrangement of Orders, after the entry relating to Order 125, insert—

"126. Justice and Security Act 2013 – Closed Material Procedure".

4. In Order 1, rule 1A (The Overriding Objective), in paragraph (4) for "and Order 116C, rule 2(1)", substitute ",Order 116C, rule 2(1) and Order 126, rule 2(1)".

5. In Order 13, after rule 7B, insert—

(**1**) 2013 c.18

(**2**) 1978 c.23; to which the most recent relevant amendments were made by paragraphs 29 and 30 of Schedule 5 to the Constitutional Reform Act 2005 (c.4) and by paragraph 15 of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010 No.976).

(**3**) S.I.1980/346; to which the most recent relevant amendments were made by S.R. 2011 No.422

"**Judgment where application under section 6 of the Justice and Security Act 2013 pending**

7C. Judgment shall not be entered against a defendant under this Order if notice has been given under Order 126 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.".

6. In Order 14, after rule 9, insert—

"**Judgment where application under section 6 of the Justice and Security Act 2013 pending**

10. No party in an action to which this Order applies may obtain summary judgment if notice has been given under Order 126 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 and renumber rules 10 and 11 accordingly.".

7. In Order 19, after rule 4, insert—

"**Judgment where application under section 6 of the Justice and Security Act 2013 pending**

5. Judgment shall not be entered against a Plaintiff under this Order if notice has been given under Order 126 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 and renumber rules 5 to 9 accordingly.".

8. In Order 78, after rule 1, insert—

"**1A.** 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.".

9. After Order 125, insert Order 126 (closed material procedure), as set out in the Schedule to these Rules.

Chris Grayling
Lord Chancellor

26th June 2013

SCHEDULE Rule 9

"ORDER 126

CLOSED MATERIAL PROCEDURE

PART I

APPLICATION OF THIS ORDER

Scope and interpretation

1.—(1) This Order 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 Order—

(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

2.—(1) Where any of the rules in this Order applies, the overriding objective in Order 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 shall satisfy itself that the material available to it enables it properly to determine the proceedings.

Rules to apply subject to this Order

3.—(1) Subject to paragraph (2), in relation to proceedings to which this Order applies, these Rules apply subject to this Order.

(2) Order 24 (discovery and inspection of documents) applies to proceedings to which this Order applies, subject only to rule 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.

PART II

GENERAL PROVISIONS

Scope of this Part

4. This Part applies, except where otherwise indicated, to all proceedings mentioned in rule 1(1).

Hearings in private

5.—(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 shall—

(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

6. Unless the Court directs otherwise, it shall 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

7. The following proceedings shall, 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

8.—(1) Subject to paragraphs (2) and (3), on—

(a) the Secretary of State deciding to make an application under section 6(2) of the Act; or

(b) the Secretary of State receiving written notice under rule 20 (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 receiving written notice under rule 30 (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 Advocate General for Northern Ireland (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 10 (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 Part applies are pending but no special advocate has been appointed, any party or the Secretary of State may request that the Advocate General for Northern Ireland appoint a special advocate.

Functions of a special advocate

9. 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.