

Ordinance 14 of 2022

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**CIVIL PROCEDURE (AMENDMENT) ORDINANCE
2022**

An Ordinance to amend the Civil Procedure Ordinance.

R. Thomson
ADMINISTRATOR

11 May 2022

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title and commencement

- 1.—(1) This Ordinance may be cited as the Civil Procedure (Amendment) Ordinance 2022.
- (2) This Ordinance comes into force on 16 May 2022.

Insertion of Part 2ZA (Closed Material Procedure)

- 2.—(1) The Civil Procedure Ordinance^(a) is amended as follows.
- (2) After Part 2 (powers of the court) insert—

(a) Cap 6, Statute Laws of Cyprus revised edition 1959 as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Interpretation Ordinance 8/2012, amended by Ordinances 26/2013 and 22/2014.

“PART 2ZA

Closed Material Procedure

Declaration permitting closed material applications in proceedings

9ZF.—(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 Administrator (whether or not the Administrator 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 that person is 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;

(iii) any 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 in subsections (4) and (5) are met if the court considers that they are met in relation to any material that a party 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 Administrator under subsection (2)(a) unless it is satisfied that the Administrator 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 Administrator 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 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 Administrator, 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 9ZH(1)(a);
- “relevant civil proceedings” means any proceedings (other than proceedings in a criminal cause or matter) before any court within the jurisdiction of the Areas;
- “sensitive material” means material the disclosure of which would be damaging to the interests of national security.

Review and revocation of declaration under section 9ZF

9ZG.—(1) This section applies where a court seized of relevant civil proceedings has made a declaration under section 9ZF.

(2) The court must keep the declaration under review, and may at any time revoke it if it considers that the declaration is no longer in the interests of the fair and effective administration of justice in the proceedings.

(3) The court must undertake a formal review of the declaration once the pre-trial disclosure exercise in the proceedings has been completed, and must revoke it if it considers that the declaration is no longer in the interests of the fair and effective administration of justice in the proceedings.

- (4) The court may revoke a declaration under subsection (2) or (3)—
- (a) on the application of—
 - (i) the Administrator (whether or not the Administrator is a party to the proceedings),
 - (ii) any party to the proceedings, or
 - (b) of its own motion.

(5) In deciding for the purposes of subsection (2) or (3) whether a declaration continues to be in the interests of the fair and effective administration of justice in the proceedings, the court must consider all of the material that has been put before it in the course of the proceedings (and not just the material on which the decision to make the declaration was based).

- (6) Rules of court must make provision—
- (a) as to how a formal review is to be conducted under subsection (3),
 - (b) as to when the pre-trial disclosure exercise is to be considered to have been completed for the purposes of subsection (3).

Determination by court of applications in section 9ZF proceedings

9ZH.—(1) Rules of court relating to any relevant civil proceedings in relation to which there is a declaration under section 9ZF (“section 9ZF proceedings”) must secure—

- (a) that a relevant person has the opportunity to make an application to the court for permission not to disclose material otherwise than to—
 - (i) the court,

- (ii) any person appointed as a special advocate, and
 - (iii) where the Administrator is not the relevant person but is a party to the proceedings, the Administrator.
- (b) that such an application is always considered in the absence of every other party to the proceedings (and every other party's legal representative),
 - (c) that the court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be damaging to the interests of national security,
 - (d) that, if permission is given by the court not to disclose material, it must consider requiring the relevant person to provide a summary of the material to every other party to the proceedings (and every other party's legal representative),
 - (e) that the court is required to ensure that such a summary does not contain material the disclosure of which would be damaging to the interests of national security.
- (2) Rules of court relating to section 9ZF proceedings must secure that provision to the effect mentioned in subsection (3) applies in cases where a relevant person—
- (a) does not receive the permission of the court to withhold material, but elects not to disclose it, or
 - (b) is required to provide another party to the proceedings with a summary of material that is withheld, but elects not to provide the summary.
- (3) The court must be authorised—
- (a) 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, to direct that the relevant person—
 - (i) is not to rely on such points in that person's case, or
 - (ii) is to make such concessions or take such other steps as the court may specify, or
 - (b) in any other case, to ensure that the relevant person does not rely on the material or (as the case may be) on that which is required to be summarised.

Appointment of Special Advocate

9ZI.—(1) The Attorney-General and Legal Adviser may appoint a person to represent the interests of a party in any section 9ZF proceedings from which the party (and any legal representative of the party) is excluded.

(2) A person appointed under subsection (1) is referred to in this section as appointed as a “special advocate”.

(3) A person appointed as a special advocate is not responsible to the party to the proceedings whose interests the person is appointed to represent.

(4) A person may be appointed as a special advocate only if that person has been recruited by the Attorney General of England and Wales to appear on the panel of special advocates.

Saving for normal disclosure rules

9ZJ.—(1) Subject to sections 9ZH, 9ZI and 9ZK, rules of court relating to section 9ZF proceedings must secure that the rules of disclosure otherwise applicable to those proceedings continue to apply in relation to the disclosure of material by a relevant person.

General provision about section 9ZF proceedings

9ZK.—(1) A person making rules of court relating to section 9ZF proceedings must have regard to the need to secure that disclosures of information are not made where they would be damaging to the interests of national security.

(2) Rules of court relating to section 9ZF proceedings may make provision—

- (a) about the mode of proof and about evidence in the proceedings,
- (b) enabling or requiring the proceedings to be determined without a hearing,
- (c) about legal representation in the proceedings,
- (d) enabling the proceedings to take place without full particulars of the reasons for decisions in the proceedings being given to a party to the proceedings (or to any legal representative of that party),
- (e) enabling the court concerned to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of that party),
- (f) about the functions of a person appointed as a special advocate,
- (g) enabling the court to give a party to the proceedings a summary of evidence taken in the party's absence.

(3) In subsection (2) references to a party to the proceedings do not include the relevant person concerned and (if the Administrator is not the relevant person but is a party to the proceedings) the Administrator.

(4) The following proceedings are to be treated as section 9ZF proceedings for the purposes of sections 9ZH to 9ZJ, this section and section 9ZL—

- (a) proceedings on, or in relation to, an application for a declaration under section 9ZF,
- (b) proceedings on, or in relation to, a decision of the court to make a declaration under that section of its own motion,
- (c) proceedings on, or in relation to, an application for a revocation under section 9ZG, and
- (d) proceedings on, or in relation to, a decision of the court to make a revocation under that section of its own motion.

(5) In proceedings treated as section 9ZF proceedings by virtue of subsection (4), a relevant person, for the purposes of sections 9ZH to 9ZJ, this section and section 9ZL, is a person who would be required to disclose sensitive material in the course of the proceedings.

Sections 9ZF to 9ZK: interpretation

9ZL.—(1) In sections 9ZF to 9ZK and this section—

“enactment” means an enactment of the Areas whenever passed or made and includes any of the following, insofar as it extends to the Areas—

- (a) an Ordinance (including this Ordinance) or subordinate legislative instrument,
- (b) an Act of the United Kingdom Parliament,
- (c) an instrument made under such an Act,
- (d) an Order of Her Majesty in Council;

“Convention” has the same meaning as in the Human Rights Ordinance^(a);

“national security” includes a reference to the interests of the international relations of the United Kingdom;

(a) Ordinance 9/2004 as amended by Ordinance 19/2005.

“relevant civil proceedings” has the meaning given by section 9ZF(11);

“relevant person” has the meaning given by section 9ZF(8) and includes any person treated as a relevant person by any enactment;

“section 9ZF proceedings” has the meaning given by section 9ZH(1) and includes any proceedings treated as section 9ZF proceedings by any enactment;

“sensitive material” has the meaning given by section 9ZF(11);

“special advocate” has the meaning given by section 9ZI(2),

and references to a party’s legal representative do not include a person appointed as a special advocate.

(2) Nothing in sections 9ZF to 9ZK and this section (or in any provision made by virtue of them)—

- (a) restricts the power to make rules of court or the matters to be taken into account when doing so,
- (b) affects the common law rules as to the withholding, on grounds of public interest immunity, of any material in any proceedings, or
- (c) is to be read as requiring a court or tribunal to act in a manner inconsistent with Article 6 of the Convention.

Disclosure proceedings

9ZM.—(1) This section applies where, by way of civil proceedings, a person (“A”) seeks the disclosure of information by another person (“B”) on the grounds that—

- (a) wrongdoing by another person (“C”) has, or may have, occurred,
- (b) B was involved with the carrying out of the wrongdoing (whether innocently or not), and
- (c) the disclosure is reasonably necessary to enable redress to be obtained or a defence to be relied on in connection with the wrongdoing.

(2) A court may not, in exercise of its residual disclosure jurisdiction, order the disclosure of information sought (whether that disclosure would be to A or to another person) if the information is sensitive information.

(3) “Sensitive information” means information—

- (a) held by an intelligence service,
- (b) obtained from, or held on behalf of, an intelligence service,
- (c) derived in whole or part from information obtained from, or held on behalf of, an intelligence service,
- (d) relating to an intelligence service, or
- (e) specified or described in a certificate issued by the Administrator, in relation to the proceedings, as information which B should not be ordered to disclose.

(4) The Administrator may issue a certificate under subsection (3)(e) only if the Administrator considers that it would be contrary to the public interest for B to disclose—

- (a) the information,
- (b) whether the information exists, or
- (c) whether B has the information.

(5) For the purposes of subsection (4) a disclosure is contrary to the public interest if it would cause damage—

- (a) to the interests of national security, or
- (b) to the interests of the international relations of the United Kingdom.

(6) In this section—

“enactment” means an enactment of the Areas whenever passed or made and includes any of the following, insofar as it extends to the Areas—

- (a) an Ordinance (including this Ordinance) or subordinate legislative instrument,
- (b) an Act of the United Kingdom Parliament,
- (c) an instrument made under such an Act,
- (d) an Order of Her Majesty in Council “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006^(a);

“information” includes—

- (a) information contained in any form of document or stored in any other way, and
- (b) alleged information;

“intelligence service” means—

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters, or
- (d) any part of Her Majesty’s forces, or of the Ministry of Defence, which engages in intelligence activities;

“obtained” means obtained directly or indirectly;

“residual disclosure jurisdiction” means any jurisdiction to order the disclosure of information which is not specifically conferred as such a jurisdiction by or under an enactment.

(7) This section—

- (a) enables the Administrator to issue a certificate under subsection (3)(e) where the Administrator is B as it enables the Administrator to issue such a certificate where another person is B, and
- (b) does not restrict any other right or privilege that the Administrator can claim in order to resist an application for the disclosure of information.

Review of certification

9ZN.—(1) Where the Administrator has issued a certificate under section 9ZM(3)(e) in relation to proceedings, any party to the proceedings may apply to the relevant court to set aside the decision on the ground in subsection (2).

(2) That ground is that the Administrator ought not to have determined, in relation to the information specified or described in the certificate, that a disclosure by B as mentioned in section 9ZM(4) would be contrary to the public interest.

(3) In determining whether the decision to issue the certificate should be set aside on the ground in subsection (2), the relevant court must apply the principles which would be applied in judicial review proceedings.

(4) Proceedings arising by virtue of this section are to be treated as section 9ZF proceedings for the purposes of sections 9ZH to 9ZL.

(5) Sections 9ZH to 9ZL apply in relation to proceedings treated as section 9ZF proceedings by subsection (4) as if—

- (a) the Administrator were the relevant person, and
- (b) the references to the interests of national security in sections 9ZH and 9ZK were references to the interests of national security or the interests of the international relations of the United Kingdom.

(a) 2006 c.52.

(6) In this section “relevant court” means any court with jurisdiction in the Areas.

Application of law and practice of England relating to closed material proceedings

9ZO. As regards to civil procedure law under sections 9ZF, 9ZG(4) and 9ZM(3)(e) or closed material applications for which there is no special provision in this Ordinance, Civil Procedure Rules or any other enactment, a court must apply the law, and rules of practice relating to closed material proceedings with any necessary modifications, in force in England at the relevant time.”

Amendment of Part 10 (Miscellaneous)

3. After section 96B (destroying or damaging immovable property charged) for “section 96(A)” substitute “section 96(C)”.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Civil Procedure (Amendment) Ordinance 2022. It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Ordinance amends the Civil Procedure Ordinance (“the principal Ordinance”).

3. Section 2 inserts Part 2ZA into the principal Ordinance. The new part is intended to mirror certain provisions of the Justice and Security Act 2013 of the Parliament of the United Kingdom with necessary modifications, which provides for the procedure relating to closed material proceedings in the Areas.

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