
**COURTS (CONSTITUTION AND JURISDICTION)
(AMENDMENT) ORDINANCE 2023**

An Ordinance to amend the Courts (Constitution and Jurisdiction) Ordinance 2007.

PJM Squires OBE
ADMINISTRATOR

02 March 2023

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 Courts (Constitution and Jurisdiction) (Amendment) Ordinance 2023.

(2) This Ordinance comes into force on 6th March 2023.

Amendment to the Courts (Constitution and Jurisdiction) Ordinance 2007

2. The Courts (Constitution and Jurisdiction) Ordinance 2007(**a**) is amended in accordance with sections 3 to 10.

Amendment to section 2 (interpretation)

3. In section 2(1), after the definition of “civil proceeding”, insert—

““closed material proceedings” means—

(a) Ordinance 5/2007 as amended by Ordinances 2/2014, 6/2016, 2/2017, 2/2018, 3/2018, 3/2019 and 7/2020.

- (a) proceedings falling with the definition of “section 9ZF proceedings” in section 9ZL(1) of the Civil Procedure Ordinance^(a); and
- (b) any appeal to the Senior Judges Court in relation to such proceedings;”.

Amendment to section 7 (appointment of Resident Judge)

- 4. In section 7(2), for “section 11(5)”, substitute “section 11(6)”.

Amendment to section 8 (appointment of an Associate Judge)

- 5. In section 8(2), for “section 11(5)”, substitute “section 11(6)”.

Amendment to section 9 (appointment of an Acting Judge)

- 6. In section 9(2), for “section 11(5), substitute “section 11(6)”.

Substitution of section 15 (composition of Senior Judges’ Court)

- 7. For section 15 (including the heading to that section), substitute—

“Senior Judges’ Court

15.—(1) This section is subject to section 26 (appellate jurisdiction of Senior Judges’ Court).

(2) Subject to subsection (4), a Senior Judges’ Court is duly constituted for the purpose of exercising any of its jurisdiction if it consists of one Senior Judge or, where more than one Senior Judge sits, an uneven number of Senior Judges.

(3) Where more than one Senior Judge sits, the judgement of the Senior Judges’ Court is by majority.

(4) The Senior Judges’ Court is deemed to be duly constituted where—

- (a) part of proceedings before the Senior Judges’ Court has been heard by an uneven number of not less than three Senior Judges; and
- (b) one or more of those Senior Judges is unable to continue to hear the proceedings.

(5) Subject to subsection (6), where any proceedings in the Senior Judges’ Court have been heard by an even number of Senior Judges and the members of that Court are equally divided on any decision before it, the proceedings must be reheard and determined by an uneven number of not less than three Senior Judges.

(6) Where the Presiding Judge is satisfied that it would be just and fair to do so, any closed material proceedings to which subsection (5) applies may be reheard by one Senior Judge.

(7) In proceedings, other than closed material proceedings, where more than one member of the Senior Judges’ Court is sitting, the Senior Judge with overall responsibility for the conduct of the proceedings is—

- (a) the Presiding Judge; or
- (b) where the Presiding Judge is not sitting, the Senior Judge who, by date of appointment as a Senior Judge, is the most senior.

(8) In closed material proceedings, where more than one member of the Senior Judges’ Court is sitting, the Senior Judge with overall responsibility for the conduct of the proceedings is the Senior Judge nominated by the Presiding Judge.”.

(a) Cap. 6 (as amended). Relevant amendments, including the insertion of sections 9ZF and 9ZL, were made by Ordinance 14/2022.

Amendment to section 16 (composition of Resident Judge's Court)

8. In section 16—

- (a) for subsection (1), substitute—
“(1) This section is subject to section 16A.”; and
- (b) in subsection (3)—
 - (i) for “tried”, substitute “heard”; and
 - (ii) for “to act as presiding Judge for the purpose of those proceedings”, substitute “as the Judge with overall responsibility for the conduct of the proceedings”.

New section 16A

9. After section 16, insert—

“Closed material proceedings before the Resident Judge's Court

16A.—(1) This section applies to any closed material proceedings before the Resident Judge's Court where more than one Judge sits to hear the proceedings.

(2) The Resident Judge's Court is deemed to be duly constituted where—

- (a) part of any closed material proceedings before the Resident Judge's Court has been heard by more than one Judge; and
- (b) one or more of those Judges is unable to continue to hear the proceedings.

(3) Where more than one Judge sits, the judgment of the Resident Judge's Court is by majority.

(4) Where the closed material proceedings have been heard by an even number of Judges who are equally divided on any decision before them, the matter must be reheard by—

- (a) an uneven number of not less than three Judges; or
- (b) where the Presiding Judge is satisfied that it would be just and fair to do so, by one Judge.

(5) The Judge with overall responsibility for the conduct of the proceedings is to be nominated by the Presiding Judge.”.

Substitution of section 37 (place of sitting)

10. For section 37, substitute—

“**37.**—(1) Without prejudice to the powers of a Senior Judge under section 27, a Court may sit at any place in the Areas.

(2) In respect of closed material proceedings, a Court may also sit at any place in England or Wales.”.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This Explanatory Note relates to the Courts (Constitution and Jurisdiction) (Amendment) Ordinance 2023 (the “Ordinance”). It is not part of the Ordinance but has been prepared by the Office of the Attorney General and Legal Adviser to assist the reader of the Ordinance.
2. The Ordinance amends the Courts (Constitution and Jurisdiction) Ordinance 2007 (the “principal Ordinance”). It makes amendments relating to closed material applications in civil proceedings to be heard by the courts of the Sovereign Base Areas of Akrotiri and Dhekelia (the “Areas”) together with a few other minor amendments.
3. Section 3 of the Ordinance inserts a definition of “closed material proceedings” into section 2(1) of the principal Ordinance. In brief, closed material proceedings consist of litigation in which a government is able to disclose material to a judge without having to disclose that material to any party in the litigation or to a party’s legal advisers. This is in circumstances where disclosure of the material would be damaging to national security. Specially appointed, security-cleared lawyers (known as “special advocates”) are instructed to represent a party’s interests in relation to material that is kept secret from that party and the party’s ordinary lawyers.
4. Sections 4 to 6 of the Ordinance make minor amendments to sections 7 to 9 of the principal Ordinance.
5. Section 7 of the Ordinance replaces section 15 of the principal Ordinance with a new, updated section 15 which clarifies provisions relating to the constitution of the Senior Judges’ Court in relation to proceedings before it, including closed material proceedings. The new section 15(6) (as inserted by section 7 of the Ordinance) permits any rehearing of closed material proceedings to be reheard by one Senior Judge, rather than three Senior Judges, but only where the Presiding Judge is satisfied that it is just and fair to do so. The new section 15(8) provides for the Presiding Judge to nominate the judge who is to have overall conduct of closed material proceedings in the Senior Judges’ Court, where more than one Senior Judge is to hear the proceedings.
6. Section 8 of the Ordinance makes minor amendments to section 16 of the principal Ordinance in respect of proceedings before the Resident Judge’s Court.
7. Section 9 inserts a new section 16A into the principal Ordinance which relates to closed material proceedings before the Resident Judge’s Court.
8. Section 10 of the Ordinance replaces section 37 of the principal Ordinance with a new section 37. The new section 37 continues to permit the Resident Judge’s Court and the Senior Judges’ Court to sit in any place in the Areas but, in respect of closed material proceedings, permits the courts to be able to sit also in any place in England or Wales.

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