



Jersey

## **ROYAL COURT (AMENDMENT No. 12) RULES 2011**

### **Arrangement**

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Jersey

## ROYAL COURT (AMENDMENT No. 12) RULES 2011

*Made**3rd May 2011**Coming into force**10th May 2011*

**THE SUPERIOR NUMBER OF THE ROYAL COURT**, in pursuance of Article 13 of the Royal Court (Jersey) Law 1948<sup>1</sup> and Schedule 1 to the Terrorist Asset-Freezing (Jersey) Law 2011<sup>2</sup>, has made the following Rules –

### **1 Interpretation**

In these Rules “principal Rules” means the Royal Court Rules 2004<sup>3</sup>.

### **2 Part 16A inserted**

After Part 16 of the principal Rules there shall be inserted the following Part –

#### **“PART 16A**

#### **PROCEEDINGS UNDER THE TERRORIST ASSET-FREEZING (JERSEY) LAW 2011**

##### **16A/1 Application and interpretation**

- (1) This Part applies to –
  - (a) any appeal to the Court under Article 28(2) of the 2011 Law;
  - (b) any application to the Court under Article 29(2) of the 2011 Law.
- (2) Rules 16A/2 and 16A/3 apply to such appeals, subject to Rules 16A/7 to 16A/17.
- (3) Rules 16A/4 to 16A/6 apply to such applications, subject also to Rules 16A/7 to 16A/17.
- (4) In this Part –

‘2011 Law’ means the Terrorist Asset-Freezing (Jersey) Law 2011<sup>4</sup>;

‘appeal’ means an appeal to which this Part applies and ‘appellant’ shall be construed accordingly;

‘application’, unless the context otherwise requires, means an application to which this Part applies and ‘applicant’ shall be construed accordingly;

‘closed material’ means –

- (a) material, evidence or submissions to the Court upon which the Chief Minister wishes to rely in proceedings;
- (b) material which adversely affects the Chief Minister’s case or supports another party’s case; or
- (c) information which the Chief Minister is required to lodge pursuant to an order under Rule 16A/5(7),

but which the Chief Minister objects to disclosing to another party and that party’s legal representative;

‘decision’ means the decision of the Chief Minister to which the appeal or application, as the case may be, relates;

‘legal representative’ in relation to a party to proceedings other than the Chief Minister does not include special counsel;

‘material’ means anything in which information of any description is recorded;

‘party’ includes the Chief Minister unless otherwise stated or unless the context otherwise requires;

‘special counsel’ means a person appointed under paragraph 5 of Schedule 1 to the 2011 Law; and

‘specially represented party’ means a party, other than the Chief Minister, whose interests special counsel represents.

#### **16A/2 Appeal under Article 28(2) – notice of appeal and fixing day for trial**

- (1) An appeal shall be brought by serving on the Chief Minister a notice of appeal within one month from the date on which the decision was communicated to the appellant.
- (2) The appellant’s notice must set out the details of –
  - (a) the decision;
  - (b) how the appellant is affected by the decision; and
  - (c) the grounds of the appeal.
- (3) The appellant must serve the following documents with the appellant’s notice –
  - (a) a copy of the written notice of the decision; and
  - (b) any evidence, including witness statements in support of any application included in the appellant’s notice.

- (4) The appellant must also serve a copy of the notice of appeal and documents referred to in paragraph (3) on the Attorney General.
- (5) Paragraphs (3), (4) and (5) of Rule 15/2 apply to an appeal for the purposes of this Part.

#### **16A/3 Appeal under Article 28(2) – general**

Rules 15/3, 15/4 and 15/5 apply to an appeal for the purposes of this Part except that –

- (a) references to the respondent are to be read as references to the Chief Minister; and
- (b) Rule 15/3(1A) is omitted.

#### **16A/4 Application under Article 29(2) – notice of application and directions hearing**

- (1) An application shall be treated as an application for judicial review in respect of which the leave of the Bailiff under Rule 16/2 has been obtained.
- (2) The application must be brought by serving through the Viscount within one month from the date on which the decision was communicated to the applicant a notice setting out –
  - (a) the details of the decision;
  - (b) how the applicant is affected by the decision; and
  - (c) the grounds on which the applicant seeks to set aside the decision.
- (3) The applicant must serve the following documents with the applicant's notice –
  - (a) a copy of the written notice of the decision; and
  - (b) any evidence, including witness statements on which the applicant relies at that stage.
- (4) The notice referred to in paragraph (2) and the documents referred to in paragraph (3) must be served on –
  - (a) the Chief Minister; and
  - (b) the Attorney General.
- (5) The applicant must –
  - (a) within 2 days after service of the notice furnish a copy of the notice and documents referred to in paragraph (3) to the Greffier together with a copy of the record of the Viscount certifying that the notice and documents have been duly served;
  - (b) within 5 days after the service of the notice apply to the Bailiff in chambers for a day to be fixed for a directions hearing.

- (6) At the directions hearing, the Court may give directions, in particular –
  - (a) for the holding of a further hearing to determine the application;
  - (b) fixing a date, time and place for the further hearing at which the parties, their legal representatives (if any) and any special counsel can be present; and
  - (c) as to the order in which, and the time within which, the following are to be lodged –
    - (i) any response to be lodged by the Chief Minister under Rule 16A/5(1), (2) and (4),
    - (ii) any application to be made under Rule 16A/5(5),
    - (iii) any information to be lodged by the Chief Minister pursuant to an order under Rule 16A/5(7),
    - (iv) any evidence to be lodged by the applicant under Rule 16A/6(1)(a),
    - (v) any evidence to be lodged by the Chief Minister under Rule 16A/6(2),
    - (vi) any application by the Chief Minister under Rule 16A/5(3), 16A/5(8) or 16A/6(3), and
    - (vii) any further evidence, including witness statements, written submissions or skeleton arguments, to be lodged by the parties and any special counsel.
- (7) At the directions hearing, the Court may also determine any application under Rule 16A/8(1) for the appointment of special counsel.

#### **16A/5 Application under Article 29(2) – response by the Chief Minister**

- (1) Where the Chief Minister intends to oppose the application to set aside the decision, he or she must lodge with the Court –
  - (a) the grounds for contesting the application; and
  - (b) any relevant evidence of which the Chief Minister is aware at that stage.
- (2) Unless the Chief Minister objects to the grounds and evidence in paragraph (1) being disclosed to the applicant and the applicant's legal representative, the Chief Minister must serve a copy of the grounds and evidence on the applicant at the same time as lodging the grounds.
- (3) Where the Chief Minister objects to the grounds and evidence in paragraph (1) being disclosed to the applicant and the applicant's legal representative, the Chief Minister must make an application in accordance with Rule 16A/12.
- (4) Where special counsel has been appointed, the Chief Minister must serve on that special counsel a copy of the grounds and evidence lodged under paragraph (1).

- (5) The applicant and any special counsel may apply to the Court for an order directing the Chief Minister to lodge and serve further information about the Chief Minister's grounds lodged under paragraph (1)(a).
- (6) The application under paragraph (5) must set out –
  - (a) what information is sought; and
  - (b) why the information sought is necessary for the determination of the application to set aside the decision.
- (7) The Court may make an order on an application under paragraph (5) where it considers that the information sought –
  - (a) is necessary for the determination of the application to set aside the decision; and
  - (b) may be provided without disproportionate cost, time or effort.
- (8) Where the Chief Minister objects to serving on the applicant and the applicant's legal representative the information sought under paragraph (5), the Chief Minister must make an application in accordance with Rule 16A/12.

#### **16A/6 Application under Article 29(2) – lodging and service of evidence**

- (1) An applicant may not rely on evidence in support of the application if the evidence was not lodged with the Greffier with the notice of application unless the applicant –
  - (a) has lodged and served that evidence, including any witness statement, on the Chief Minister and any special counsel not less than 14 days before the application is heard; or
  - (b) has obtained the leave of the Court.
- (2) Where the applicant serves evidence in support of the application, the Chief Minister must lodge and serve, subject to paragraph (3), any further evidence, including any witness statement, on the applicant and any special counsel.
- (3) Where the Chief Minister seeks to withhold disclosure of any closed material from the applicant and the applicant's legal representative, the Chief Minister must make an application in accordance with Rule 16A/12.
- (4) The Chief Minister must serve any closed material upon special counsel.
- (5) The parties and, where relevant, any special counsel must lodge and serve any further evidence, including witness statements, written submissions or skeleton arguments as directed by the Court.

**16A/7 Appeals and applications – hearings**

- (1) All appeals and applications must be determined at a hearing except where –
  - (a) the appellant or applicant, as the case may be, withdraws the appeal or application;
  - (b) the Chief Minister consents to the appeal or application being allowed; or
  - (c) the parties agree to a determination without a hearing.
- (2) Where the Court considers it necessary for a party other than the Chief Minister and that party's legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, the court shall –
  - (a) direct accordingly; and
  - (b) conduct the hearing, or that part of it from which the party and that party's legal representative are excluded, in private but attended by special counsel to represent the interests of the excluded party.

**16A/8 Special counsel, communications, etc.**

- (1) Where an appeal or application is pending but no person has been appointed under paragraph 5 of Schedule 1 to the 2011 Law as special counsel, any party, or the Attorney General, may request the Court to make such an appointment.
- (2) A request referred to in paragraph (1) must be made as soon as practicable.
- (3) The function of special counsel is to represent the interests of a party other than the Chief Minister by, for example –
  - (a) making submissions to the Court at any hearing from which the party and that party's legal representative are excluded;
  - (b) adducing evidence and cross-examining witnesses at such a hearing;
  - (c) making applications to the Court or seeking directions from the Court where necessary; and
  - (d) making written submissions to the Court.
- (4) Special counsel may communicate with the specially represented party or that party's legal representative at any time before the Chief Minister serves closed material on special counsel.
- (5) After the Chief Minister serves closed material on special counsel, special counsel must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (6) or a direction of the Court pursuant to a request under paragraph (7).
- (6) Special counsel may, without directions from the Court, communicate about the proceedings with –



- 
- (a) the Court;
  - (b) the Chief Minister;
  - (c) the Attorney General or any other person acting for the Chief Minister; and
  - (d) any other person, except for –
    - (i) the specially represented party and that party's legal representative, and
    - (ii) any other party to the proceedings (other than the Chief Minister) and that party's legal representative,with whom it is necessary for administrative purposes for special counsel to communicate about matters not connected with the substance of the proceedings.
- (7) Special counsel may request directions from the Court authorizing special counsel to communicate with the specially represented party or that party's legal representative or with any other person.
- (8) Where special counsel makes a request for directions under paragraph (7) –
- (a) the Court shall notify the Chief Minister of the request; and
  - (b) the Chief Minister must, within a period specified by the Court, lodge and serve on special counsel notice of any objection which the Chief Minister has to the proposed communication, or to the form in which it is proposed to be made.
- (9) Paragraph (5) does not prohibit the specially represented party from communicating with special counsel after the Chief Minister has served closed material on special counsel as mentioned in paragraph (4), but –
- (a) that party may only communicate with special counsel through a legal representative in writing; and
  - (b) special counsel must not reply to the communication other than in accordance with directions given by the Court, except that special counsel may without such directions send a written acknowledgment of receipt to the specially represented party's legal representative.
- (10) Where the Chief Minister objects under paragraph (8)(b) to a proposed communication by special counsel the Court shall fix a hearing for the Chief Minister and special counsel to make oral representations, unless –
- (a) special counsel gives notice to the Court that he or she does not challenge the objection;
  - (b) the Court –
    - (i) has previously considered an objection under paragraph (8)(b) to the same or substantially the same communication, and
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- (ii) is satisfied that it would be just to uphold or dismiss that objection without a hearing; or
  - (c) the Chief Minister and special counsel consent to the Court deciding the issue without a hearing.
- (11) If special counsel does not challenge the objection, special counsel must give notice of that fact to the Court and to the Chief Minister –
  - (a) within 14 days after the Chief Minister serves on special counsel a notice under paragraph (8)(b); or
  - (b) within such other period as the Court may direct.
- (12) Where the Court fixes a hearing under paragraph (10) –
  - (a) special counsel may lodge with the Court and serve on the Chief Minister a reply to the Chief Minister’s objection;
  - (b) the Chief Minister may lodge with the Court and serve on special counsel a response to special counsel’s reply; and
  - (c) the Chief Minister and special counsel must lodge with the Court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must –
    - (i) give brief reasons for their contentions on each issue in dispute, and
    - (ii) set out any proposals for the court to resolve the issues in dispute.
- (13) A hearing under paragraph (10) must take place in the absence of the specially represented party and that party’s legal representative.

#### **16A/9 Modification of the general rules of evidence and disclosure**

- (1) So much of Part 6 as relates to disclosure and inspection of documents, and so much of these Rules as relates to evidence, do not apply to appeals and applications for the purposes of this Part.
- (2) Subject to this Part and to any directions of the Court, the evidence of a witness may be given either –
  - (a) orally before the Court; or
  - (b) in a witness statement.
- (3) The Court may also receive evidence in documentary or any other form.
- (4) A party is entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which a party and that party’s legal representative are not excluded.
- (5) Special counsel is entitled to adduce evidence and to cross-examine witnesses.
- (6) The Court may require a witness to give evidence on oath or by solemn affirmation.

**16A/10 Search for, lodging of and service of material**

- (1) A party (the disclosing party) must –
  - (a) make a reasonable search for material relevant to the matters under consideration in the proceedings to which this Part applies; and
  - (b) lodge and serve on the other party and any special counsel material other than closed material –
    - (i) on which the disclosing party relies,
    - (ii) which adversely affects the disclosing party's case,
    - (iii) which adversely affects the other party's case, or
    - (iv) which supports the other party's case.
- (2) Paragraph (1)(b)(iii) does not apply to an appeal.
- (3) The factors relevant in deciding the reasonableness of a search under paragraph (1)(a) include –
  - (a) the amount of material involved;
  - (b) the nature and complexity of the proceedings;
  - (c) whether the material is in the control of the party making the search;
  - (d) the ease and expense of retrieval of any material; and
  - (e) the significance of any material which is likely to be located during the search.
- (4) The duty to search for, lodge and serve material under paragraph (1) continues until the appeal or the application, as the case may be, has been determined.
- (5) Where material, other than closed material, to which the duty under paragraph (1) extends comes to a party's attention before the appeal or the application has been determined, that party must immediately –
  - (a) lodge it with the Court;
  - (b) serve it on the other party; and
  - (c) serve it on any special counsel.

**16A/11 Redacted material**

Where the Chief Minister serves on another party any evidence (including a witness statement) or material which has been redacted on grounds other than those of legal professional privilege, the Chief Minister must –

- (a) notify the party that the evidence or material has been redacted and on what grounds it has been redacted;
- (b) lodge the evidence or material with the Court in an unredacted form together with an explanation of the redaction.

**16A/12 Permission to withhold closed material**

- (1) The Chief Minister –
  - (a) must apply to the Court for permission to withhold closed material from another party and that party's legal representative in accordance with this rule; and
  - (b) may not rely on closed material at a hearing unless special counsel has been appointed and attends the hearing to represent the interests of that party.
- (2) The Chief Minister must lodge with the Court and serve, at such time as the Court directs, on special counsel –
  - (a) the closed material;
  - (b) a statement of the reasons for withholding that material from the specially represented party; and
  - (c) if the Chief Minister considers it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the specially represented party or that party's legal representative.
- (3) Where the Chief Minister serves on special counsel any closed material which has been redacted on grounds other than those of legal professional privilege –
  - (a) the Chief Minister must lodge with the Court the material in an unredacted form together with an explanation of the redactions; and
  - (b) the Court shall give a direction to the Chief Minister as to what may be redacted and what, if any, must be served on special counsel in an unredacted form.
- (4) The Chief Minister may at any time amend or supplement material lodged under this Rule, but only with –
  - (a) the agreement of special counsel; or
  - (b) the permission of the Court.

**16A/13 Consideration of application to withhold material**

- (1) Where the Chief Minister applies in accordance with Rule 16A/12 for permission to withhold closed material the Court shall fix a hearing for the Chief Minister and special counsel to make oral representations, unless –
  - (a) special counsel gives notice to the Court that special counsel does not challenge the application;
  - (b) the Court –
    - (i) has previously considered an application for permission to withhold the same or substantially the same material, and
    - (ii) is satisfied that it would be just to give permission without a hearing; or

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- (c) the Chief Minister and special counsel consent to the Court deciding the issue without a hearing.
  - (2) If special counsel does not challenge the application, special counsel must give notice of that fact to the Court and to the Chief Minister –
    - (a) within 14 days after the Chief Minister serves on special counsel the material under Rule 16A/12(2); or
    - (b) within such other period as the Court may direct.
  - (3) Where the Court fixes a hearing under paragraph (1) –
    - (a) special counsel may lodge with the Court and serve on the Chief Minister a reply to the Chief Minister’s application;
    - (b) the Chief Minister may lodge with the Court and serve on special counsel a response to special counsel’s reply; and
    - (c) the Chief Minister and special counsel must lodge with the Court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must –
      - (i) give brief reasons for their contentions on each issue in dispute, and
      - (ii) set out any proposals for the court to resolve the issues in dispute.
  - (4) A hearing under this Rule must take place in the absence of the specially represented party and that party’s legal representative.
  - (5) The Court shall give permission to the Chief Minister to withhold closed material where it considers that disclosure of that material would be contrary to the public interest.
  - (6) Where the Court gives permission to the Chief Minister to withhold closed material, the Court shall –
    - (a) consider whether to direct the Chief Minister to serve a summary of that material on the specially represented party or that party’s legal representative; but
    - (b) ensure that such a summary does not contain material, the disclosure of which would be contrary to the public interest.
  - (7) Where the Court does not give permission to the Chief Minister to withhold closed material from, or directs the Chief Minister to serve a summary of that material on, the specially represented party or that party’s legal representative –
    - (a) the Chief Minister is not required to serve that material or summary; but
    - (b) if the Chief Minister does not do so, at a hearing on notice, the Court may –
      - (i) where it considers that the material or anything that is required to be summarised might adversely affect the Chief Minister’s case or supports the case of the
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specialy represented party, direct that the Chief Minister must not rely on such material in the Chief Minister's case, or must make such concessions or take such other steps, as the Court may specify, or

- (ii) in any other case, direct that the Chief Minister does not rely on the material or (as the case may be) on that which is required to be summarised.

#### **16A/14 Failure to comply with directions**

- (1) Where a party or special counsel fails to comply with a direction of the Court, the Court may serve on that party or special counsel a notice which states –
- (a) the respect in which that party or special counsel 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 available to it, if the party or special counsel fails to comply with the relevant direction within the time specified.
- (2) Where a party or special counsel fails to comply with such a notice, the Court may proceed in accordance with paragraph (1)(c).

#### **16A/15 Judgments**

- (1) When the Court gives judgment in any appeal or application, it may withhold all or some of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.
- (2) Where the judgment of the Court does not include the full reasons for its decision, the Court shall serve on the Chief Minister and special counsel a separate written judgment including those reasons.
- (3) Where the Court serves a separate written judgment under paragraph (2), special counsel may apply to the Court to amend that judgment and the judgment under paragraph (1) on the grounds that the separate written judgment under paragraph (2) contains material not in the judgment under paragraph (1) the disclosure of which would not be contrary to the public interest.
- (4) Special counsel must serve a copy of the application under paragraph (3) on the Chief Minister.
- (5) The Court shall give special counsel and the Chief Minister an opportunity to lodge written submissions and may determine the application with or without a hearing.

**16A/16 Reconsideration of order, direction or judgment**

- (1) This Rule applies where the Court proposes, in proceedings on any application or appeal where special counsel has been appointed, to serve on a party other than the Chief Minister –
  - (a) notice of any order or direction made or given in the absence of that other party; or
  - (b) any written judgment.
- (2) Before the Court serves any such notice or judgment on a party other than the Chief Minister, it shall first serve notice on the Chief Minister of its intention to do so.
- (3) The Chief Minister may, within 5 days of being served with notice under paragraph (2), apply to the Court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if the Chief Minister considers –
  - (a) the Chief Minister's compliance with the order or direction; or
  - (b) the notification to another party of any matter contained in the judgment, order or direction,would cause information to be disclosed contrary to the public interest.
- (4) Where the Chief Minister makes an application under paragraph (3), the Chief Minister must at the same time serve on special counsel –
  - (a) a copy of the application;
  - (b) a copy of the relevant document referred to in paragraph (1)(a) or (b); and
  - (c) a copy of the notice served on the Chief Minister pursuant to paragraph (2).
- (5) Rule 16A/13 (except for paragraphs (6) and (7)) applies with any necessary modifications to the consideration of an application under paragraph (3) of this Rule.
- (6) The Court shall not serve notice on a party other than the Chief Minister as mentioned in paragraph (1) before the time for the Chief Minister to make an application under paragraph (3) has expired.

**16A/17 Supply of court documents**

Unless the Court directs otherwise, no person may obtain from the records of the Court a copy of any document relating to proceedings to which this Part applies.”.

**3 Citation and commencement**

- (1) These Rules may be cited as the Royal Court (Amendment No. 12) Rules 2011.
- (2) These Rules shall come into force on the seventh day after they are made.

**P. MATTHEWS**

*Deputy Judicial Greffier*



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- <sup>1</sup> *chapter 07.770*
  - <sup>2</sup> *chapter 17.862*
  - <sup>3</sup> *chapter 07.770.72*
  - <sup>4</sup> *chapter 17.862*