



Jersey

ROYAL COURT (AMENDMENT No. 23) RULES 2018

Arrangement

Rule

1	Interpretation.....	3
2	Rule 3/1 amended	3
3	Part 14A inserted.....	4
4	Part 15C inserted.....	11
5	Part 16B inserted.....	13
6	Part 18 amended.....	25
7	Schedule 1 amended	25
8	Schedule 3 inserted	26
9	Citation and commencement.....	26



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ROYAL COURT (AMENDMENT No. 23) RULES 2018

*Made**24th September 2018**Coming into force**1st October 2018*

THE SUPERIOR NUMBER OF THE ROYAL COURT, in pursuance of Article 13 of the Royal Court (Jersey) Law 1948¹, Article 96 of the Mental Health (Jersey) Law 2016², Article 71 of the Capacity and Self-Determination (Jersey) Law 2016³ and Schedule 3 to the Counter-Terrorism and Security Act 2015, as extended to Jersey by the Counter-Terrorism and Security (Jersey) Order 2017⁴, has made the following Rules –

1 Interpretation

In these Rules “principal Rules” means the Royal Court Rules 2004⁵.

2 Rule 3/1 amended

- (1) Rule 3/1 of the principal Rules shall be amended in accordance with this Rule.
- (2) In the heading, after “**Probate**” insert “**and Protection**”.
- (3) For paragraph (3) substitute –
 - “(3) The jurisdiction of the Probate and Protection division is –
 - (a) that set out in Article 2 of the Probate (Jersey) Law 1998⁶; and
 - (b) the determination of matters concerning –
 - (i) lasting powers of attorney (LPAs) under Part 2, and declarations and decisions, appointments of delegates, and directions, under Part 4, of the Capacity and Self-Determination (Jersey) Law 2016⁷; and
 - (ii) the appointment and discharge of tuteurs, and the giving of directions, under the Children’s Property and Tuteurs (Jersey) Law 2016⁸.”
- (4) In paragraph (4) for “Probate division” substitute “Probate and Protection division”.

3 Part 14A inserted

After Part 14 of the principal Rules there shall be inserted the following Part 14A and Part 14B –

“PART 14A**CAPACITY AND SELF-DETERMINATION (JERSEY) LAW 2016****14A/1 Application of Part 14A and overriding objective**

- (1) This Part applies to proceedings in which the Court exercises jurisdiction under Part 2 or Part 4 of the 2016 Law.
- (2) The overriding objective of the Court in proceedings to which this Part applies includes, for the purposes of Rule 1/6(2), ensuring that P’s interests and position are properly considered.

14A/2 Interpretation

In this Part unless the context otherwise requires –

“2016 Law” means the Capacity and Self-Determination (Jersey) Law 2016⁹;

“application” (except in Rule 14A/13(2)) means an application under the 2016 Law for the Court to make a declaration, order or appointment which the Court is empowered to make under Part 4 of the 2016 Law.

14A/3 Form of application

Unless otherwise directed by the Court, an application must be made in the form and in the manner specified in practice directions.

14A/4 Dealing with applications

- (1) Where permission to make an application is required, the Court may grant or refuse permission without a hearing, or direct a hearing to consider whether permission should be granted.
- (2) The Court may deal with an application or any part of an application at a hearing or without a hearing.
- (3) In considering whether it is necessary to hold a hearing, the Court shall, as appropriate, have regard to –
 - (a) the nature of the proceedings and the orders sought;
 - (b) whether the application is opposed by a person who appears to the Court to have an interest in matters relating to P’s best interests;
 - (c) whether the application involves a substantial dispute of fact;

- (d) the complexity of the facts or the law (or both);
 - (e) any wider public interest in the proceedings;
 - (f) the circumstances of P and of any party, in particular as to whether their rights would be adequately protected if a hearing were not held;
 - (g) whether the parties agree that the Court should dispose of the application without a hearing; and
 - (h) any other matter specified in practice directions.
- (4) Where the Court considers that a hearing is necessary it shall give such directions as to the hearing of the application as it considers appropriate in accordance with this Part.
- (5) Practice directions are to specify –
- (a) which persons (other than the person making the application) are to be respondents to, or given notice of, the application; and
 - (b) when service upon such persons is to be by personal service or ordinary service.

14A/5 Directions

- (1) The Court may in relation to an application –
- (a) give directions in writing; or
 - (b) set a date for a directions hearing; and
 - (c) do anything else specified in practice directions.
- (2) When giving directions, the Court may, without prejudice to its general powers to give directions, require a report under Article 29 of the 2016 Law and give directions as to any such report.
- (3) The Court may give directions at any time –
- (a) of its own motion; or
 - (b) on the application of a party.

14A/6 Documents to be lodged with application

- An application must be accompanied by –
- (a) any evidence on which the applicant intends to rely;
 - (b) an assessment of capacity form where this is required by practice directions;
 - (c) any other documents referred to in the application form; and
 - (d) such other information and material as may be specified in practice directions.

14A/7 Verifying documents by statement on oath

- (1) A requirement may be made by the Court, or by practice directions, that an application and documents related to an application be verified by statement on oath.
- (2) If an application is not verified by statement on oath in accordance with a requirement referred to in paragraph (1), the applicant may not rely upon the relevant document as evidence of any of the matters set out in it unless the Court permits.
- (3) If a witness statement is not verified by statement on oath, it shall not be admissible in evidence unless the Court permits.

14A/8 Participation of P

- (1) The Court must in each case, of its own motion or on the application of any person, consider whether it should make one or more of the directions in paragraph (2), having regard to –
 - (a) the nature and extent of the information before the Court;
 - (b) the issues raised in the case;
 - (c) whether a matter is contentious; and
 - (d) whether P has been notified in accordance with Rule 14A/9 and what, if anything, P has said or done in response to such notification.
- (2) The directions are that –
 - (a) P should be joined as a party;
 - (b) P's participation should be secured by the appointment of a legal representative to represent P in the proceedings and to discharge such other functions as the Court may direct;
 - (c) P's participation should be secured by the appointment of a representative whose function shall be to provide the Court with information as to the matters set out in Article 6(3) of the 2016 Law and to discharge such other functions as the Court may direct;
 - (d) P should have the opportunity to address (directly or indirectly) the Court and, if so directed, the circumstances in which that should occur;
 - (e) P's interests and position can properly be secured without any direction under sub-paragraphs (a) to (d) being made or by the making of an alternative direction meeting the overriding objective.
- (3) Any appointment or directions made pursuant to paragraph (2)(b) to (e) may be made for such period or periods as the Court thinks fit.
- (4) Unless P has capacity to conduct the proceedings, an order joining P as a party shall only take effect –
 - (a) on the appointment of a guardian ad litem on P's behalf; or

- (b) if the Court so directs, on or after the appointment of a legal representative.
- (5) If the Court has directed that P should be joined as a party but such joinder does not occur because no guardian ad litem or legal representative is appointed, the Court shall record in a judgment or order –
 - (a) the fact that no such appointment was made; and
 - (b) the reasons given for that appointment not being made.

14A/9 Notifying P

- (1) Unless the Court gives a direction under paragraph (2), P is to be given notice of a matter or document, or to be provided with a document, either under this Rule or in accordance with a direction or order of the Court.
- (2) In any case the Court may, either of its own motion or on application, direct that P must not be notified of any matter or document, or provided with any document, whether in accordance with this Rule or at all.
- (3) Subject to paragraph (4) where P is a child –
 - (a) if the person to be notified under this Rule is a person with parental responsibility for the child within the meaning of the Children (Jersey) Law 2002¹⁰ or, if there is no such person, a person with whom the child resides or in whose care the child is;
 - (b) all references to “P” in this Rule are to be read as referring to the person notified in accordance with sub-paragraph (a).
- (4) Paragraph (3) does not apply, and there is no requirement to notify P, where the person referred to in paragraph (3)(a) has already been served or notified of the relevant matter in accordance with another Rule or practice direction.
- (5) Where P is to be notified under this Rule, notification must be effected as soon as practicable in the manner specified by practice directions or in such other manner as the Court may direct.
- (6) P (whether or not a party) must be notified –
 - (a) where a direction has been made under Rule 14A/8;
 - (b) of the appointment of a guardian ad litem or legal or other representative on P’s behalf.
- (7) P (where P is not a party) must be notified –
 - (a) that an application has been made to the Court;
 - (b) that an application has been withdrawn; and
 - (c) of the date on which a hearing is to be held in relation to the matter, where that hearing is for disposing of the application.

- (8) Practice directions under paragraph (5) must provide for explaining to P –
 - (a) who the applicant is;
 - (b) the question raised by the application;
 - (c) what will happen if the Court grants the application;
 - (d) where notification contains a proposal for the appointment of a person to make decisions on P’s behalf in relation to the matter to which the application relates, details of who that person is;
 - (e) where an application has been withdrawn –
 - (i) that the application has been withdrawn; and
 - (ii) the consequences of that withdrawal, and for informing P that P may seek advice and assistance in relation to any matter of which P is notified.
- (9) P must be notified of any decision of the Court relating to P except for a case management decision.
- (10) P must be provided with a copy of any order relating to a decision of which P must be notified in accordance with paragraph (9).
- (11) Where the Court directs that P is to be notified of any other matter, the person effecting notification must –
 - (a) explain to P such matters as may be directed by the Court; and
 - (b) inform P that P may seek advice and assistance in relation to any matter of which P is notified.
- (12) Practice directions under this Rule may include provision for lodging a certificate of notification which certifies –
 - (a) the date on which, and how, P was notified; and
 - (b) that P was notified in accordance with this Rule.
- (13) A person directed by the Court to effect notification may apply to the Court seeking an order –
 - (a) dispensing with the requirement to comply with the provisions in this Rule; or
 - (b) requiring some other person to comply with the provisions in this Rule.

14A/10 Hearings in private

- (1) Unless otherwise ordered by the Court, a hearing is to be held in private.
- (2) A private hearing is a hearing which only the following persons are entitled to attend –
 - (a) the parties;
 - (b) P (whether or not a party);

- (c) any person acting in the proceedings as a guardian ad litem or a representative appointed to secure P's participation;
- (d) any legal representative of any of the parties or of P (whether or not a party); and
- (e) any officer of the Court.

- (3) In relation to a private hearing, the Court may make an order –
- (a) authorising any person, or class of persons, to attend the hearing or a part of it; or
 - (b) excluding any person, or class of persons, from attending the hearing or a part of it.

14A/11 Hearings in public

Practice directions may specify the circumstances in which the Court will make an order for all or part of a hearing to be held in public, including circumstances in which an order may –

- (a) exclude any person, or class of persons, from attending a public hearing or a part of it;
- (b) impose restrictions on the publication of the identity of –
 - (i) any party;
 - (ii) P (whether or not a party);
 - (iii) any witness; or
 - (iv) any other person;
- (c) prohibit the publication of any information that may lead to any such person being identified;
- (d) prohibit the further publication of any information relating to the proceedings from such date as the Court may specify; or
- (e) impose other restrictions on the publication of information relating to the proceedings.

14A/12 Costs

- (1) Where the proceedings concern P's property and affairs the general rule is that the costs of the proceedings, or of that part of the proceedings that concerns P's property and affairs, shall be paid by P or charged to P's estate.
- (2) Where the proceedings concern P's personal welfare the general rule is that there will be no order as to the costs of the proceedings, or of that part of the proceedings that concerns P's personal welfare.
- (3) Where the proceedings concern both property and affairs and personal welfare the Court, in so far as practicable, shall apportion the costs as between the respective issues.

- (4) The Court may depart from paragraphs (1) to (3) if the circumstances so justify, and in deciding whether departure is justified the Court will have regard to all the circumstances including –
- (a) the conduct of the parties;
 - (b) whether a party has succeeded on part of that party’s case, even if not wholly successful; and
 - (c) the role of any public body involved in the proceedings.

14A/13 Lasting power of attorney: objection to registration

- (1) This Rule applies where –
- (a) notice of objection to registration of an instrument has been given in accordance with paragraph 5(1) of Part 2 of the Schedule to the 2016 Law; and
 - (b) the Judicial Greffe is satisfied that the ground for making the objection is established.
- (2) Rule 20/2 shall apply to an application to the Court under paragraph 5(3) of Part 2 of the Schedule to the 2016 Law as it applies to an appeal from an order or decision of the Greffier.

14A/14 Delegate to take oath

A person who is appointed as a delegate shall take oath in the form set out in Schedule 3.

PART 14B

MENTAL HEALTH (JERSEY) LAW 2016

14B/1 Application of Part 14B

This Part applies to proceedings in which the Court exercises jurisdiction under Part 2 of the 2016 Law.

14B/2 Interpretation

In this Part unless the context otherwise requires –

“2016 Law” means the Mental Health (Jersey) Law 2016¹¹;

“application” means an application under –

- (a) Article 11(1) of the 2016 Law (appointment of nearest person);
- (b) Article 12(1) of the 2016 Law (discharge of an appointment of nearest person);
- (c) Article 12(2) of the 2016 Law (variation of orders).

14B/3 Form of application

Unless otherwise directed by the Court, an application must be made in the form and in the manner specified in practice directions.

14B/4 Dealing with applications

- (1) The Court may deal with an application or any part of an application at a hearing or without a hearing (and practice directions under paragraph (3) of Rule 14A/4 may be made for the purpose of this paragraph as they may be made for the purposes of that paragraph).
- (2) Where the Court considers that a hearing is necessary it shall give such directions as to the hearing of the application as it considers appropriate in accordance with this Part.
- (3) Practice directions are to specify –
 - (a) which persons (other than the person making the application) are to be respondents to, or given notice of, the application; and
 - (b) when service upon such persons is to be by personal service or ordinary service.

14B/5 Directions

- (1) The Court may in relation to an application –
 - (a) give directions in writing; or
 - (b) set a date for a directions hearing; and
 - (c) do anything else specified in practice directions.
- (2) The Court may give directions at any time –
 - (a) of its own motion; or
 - (b) on the application of a party.

14B/6 Documents to be lodged with application

An application must be accompanied by such documents, information and material as may be specified in practice directions.

14B/7 Verifying documents on oath

A requirement may be made by the Court, or by practice directions, that an application and documents related to an application be verified by statement on oath.”.

4 Part 15C inserted

After Part 15B of the principal Rules there shall be inserted the following Part –

“PART 15C**APPEALS FROM THE MENTAL HEALTH REVIEW TRIBUNAL****15C/1 Application and interpretation**

- (1) This Part applies to appeals from the Mental Health Review Tribunal under—
 - (a) Article 54 of the Mental Health (Jersey) Law 2016¹²; and
 - (b) Article 58 of the Capacity and Self-Determination (Jersey) Law 2016¹³,on a point of law.
- (2) In this Part –
 - (a) “appeal” means an appeal to which this Part applies;
 - (b) “appellant” means the person who is bringing the appeal;
 - (c) “respondent” means any party to the proceedings before the Tribunal to which an appeal relates, other than the party who is bringing the appeal;
 - (d) “transcript” means the transcript or other record of the proceedings before the Tribunal to which an appeal relates.

15C/2 Procedure on appeal

- (1) The appeal shall be brought within 28 days of the date on which the Tribunal’s decision or order was given, by serving through the intermediary of the Viscount a notice of appeal in writing setting out the grounds of the appeal.
- (2) The notice of appeal must be served on the respondent.
- (3) The appellant must –
 - (a) within 2 days after service of the notice of appeal file with the Greffier –
 - (i) a copy of the notice together with the record of the Viscount certifying that the notice of appeal has been served,
 - (ii) a copy of the decision or order of the Tribunal which is the subject of the appeal, and
 - (iii) a copy of any written reasons given by the Tribunal for its decision or order;
 - (b) within 10 days after the service of the notice of appeal apply to the Bailiff’s Secretary for a day to be fixed for the hearing of the appeal.
- (4) If the appellant does not apply for a day to be fixed for the hearing of the appeal in accordance with paragraph (3)(b), the appeal shall be deemed to have been withdrawn.

- (5) If a party to the appeal so requests, a transcript shall, subject to paragraph (6), be made available to the parties to the appeal and to the Court.
- (6) Before a transcript is made available in accordance with paragraph (5), the party requesting it shall pay the appropriate transcription fee.
- (7) The appellant shall within 21 days of having fixed a day for the hearing of the appeal in accordance with paragraph (3)(b), deliver to the respondent a copy of the contentions to be urged and the authorities to be cited by the appellant in support of the appeal.
- (8) The appellant shall at the same time file 4 copies of the same with the Greffier.
- (9) A respondent who wishes to resist the appeal shall within 21 days of having received the appellant's contentions deliver to the appellant –
 - (a) an answer in writing setting out the grounds on which the respondent will resist the appeal; and
 - (b) a copy of the contentions to be urged and the authorities to be cited by the respondent at the hearing of the appeal.
- (10) The respondent shall at the same time file 4 copies of the same with the Greffier.
- (11) This Rule is subject to the discretion of the Court to make such order or give such directions as it thinks fit in relation to an appeal.
- (12) Notices, pleadings and documents delivered or filed for the purposes of this Part shall be in such form and comply with such requirements as the Greffier may set out and publish from time to time in practice directions, in consultation with the Bailiff.”.

5 Part 16B inserted

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

“PART 16B **PROCEEDINGS UNDER THE COUNTER-TERRORISM AND** **SECURITY ACT 2015**

16B/1 Application and interpretation

- (1) This Part applies to TEO proceedings in the Court.
- (2) In this Part –

“the Act” means the Counter-Terrorism and Security Act 2015 as extended to Jersey by the Counter-Terrorism and Security (Jersey) Order 2017¹⁴;

“closed material” means any relevant material that the Minister objects to disclosing to a relevant party on the grounds that disclosure is contrary to the public interest;

“legal representative” is to be construed in accordance with paragraph 4(4)(b) of Schedule 3 to the Act;

“the Minister” means the Minister for Home Affairs;

“open material” means any relevant material that the Minister does not object to disclosing to a relevant party on the grounds that disclosure is contrary to the public interest;

“relevant material” means the material described in paragraph 3(1)(a) to (c) of Schedule 3 to the Act;

“relevant party” means any party to the proceedings other than the Minister;

“review application” has the meaning given in Rule 16B/5(1);

“special counsel” means a person appointed under paragraph 10(1) of Schedule 3 to the Act;

“TEO” means a temporary exclusion order (which has the same meaning as in section 2 of the Act);

“TEO proceedings” has the same meaning as in paragraph 1 of Schedule 3 to the Act;

“TEO subject” means an individual on whom the Minister has imposed, or is proposing to impose, a TEO.

- (3) For the purposes of this Part, disclosure is contrary to the public interest if it is made contrary to the interests of national security, international relations or the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm the public interest.

16B/2 Modification of the overriding objective

- (1) Where any of the Rules in this Part applies, the overriding objective in Rule 1/6, 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 contrary to the public interest.
- (3) Subject to paragraph (2), the Court must satisfy itself that the material available to it enables it properly to determine proceedings.

16B/3 Application for permission to impose a TEO

An application under section 3(1)(b) of the Act for permission to impose a TEO must be made by the Minister by filing with the Court –

- (a) a statement of reasons to support the application;

- (b) any relevant material of which the Minister is aware at that stage; and
- (c) any written submissions.

16B/4 Reference of TEO imposed without permission

A reference under paragraph 3(1) of Schedule 2 to the Act of the imposition of a TEO imposed without permission must be made by the Minister by representation that includes –

- (a) a statement of reasons for imposing the TEO;
- (b) any relevant material of which the Minister is aware at that stage; and
- (c) any written submissions.

16B/5 Review applications – initial procedures

- (1) An application to the Court to review a decision under section 11 of the Act (“a review 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) A review application must be brought by serving through the Viscount within one month from the date on which the decision was communicated to the TEO subject a notice setting out –
 - (a) the details of the decision which it is sought to review;
 - (b) details of how the TEO subject is affected by the TEO; and
 - (c) the grounds on which the TEO subject seeks to review the decision.
- (3) The TEO subject must serve the following documents with his or her notice –
 - (a) a copy of –
 - (i) the written notice under section 4 of the Act of the imposition of the TEO; or
 - (ii) where relevant, any notice under section 9 of the Act imposing any or all of the permitted conditions; and
 - (b) any evidence, including witness statements, on which the TEO subject 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 Minister and (if appointed) on special counsel; and
 - (b) the Attorney General.
- (5) The TEO subject 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 the application to be lodged by the Minister under Rule 16B/6(1), (2) and (4),
- (ii) any application to be made under Rule 16B/6(5),
- (iii) any information to be lodged by the Minister pursuant to an order under Rule 16B/6(7),
- (iv) any evidence to be lodged by the TEO subject under Rule 16B/7(1)(a),
- (v) any evidence to be lodged by the Minister under Rule 16B/7(2),
- (vi) any application by the Minister under Rule 16B/6(3), 16B/6(8) or 16B/7(3), and
- (vii) any further evidence, including witness statements, written submissions or skeleton arguments, to be lodged by the parties and any special counsel.

16B/6 Review application – response by the Minister

- (1) Where the Minister intends to oppose the exercise of any of the Court's powers under section 11(3) or (4) of the Act, the Minister must lodge with the Court –
- (a) the grounds for opposing the exercise of those powers; and
- (b) any relevant evidence (including any relevant material) of which the Minister is aware at that stage.
- (2) Unless the Minister objects to the grounds and evidence in paragraph (1) being disclosed to the TEO subject and the TEO subject's legal representative, the Minister must serve a copy of the grounds and evidence on the TEO subject at the same time as lodging the grounds.
- (3) Where the Minister objects to the grounds and evidence in paragraph (1) being disclosed to the TEO subject and the TEO

subject's legal representative, the Minister must make an application in accordance with Rule 16B/13.

- (4) Where special counsel has been appointed, the Minister must serve on that special counsel a copy of the grounds and evidence lodged under paragraph (1).
- (5) The TEO subject and any special counsel may apply to the Court for an order directing the Minister to lodge and serve further information about the Minister's grounds lodged under paragraph (1)(a).
- (6) An application under paragraph (5) must be made as soon as reasonably practicable and must set out –
 - (a) what information is sought; and
 - (b) why the information sought is necessary for the determination of the review application.
- (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 review application; and
 - (b) may be provided without disproportionate cost, time or effort.
- (8) Where the Minister objects to serving on the TEO subject and the TEO subject's legal representative the information sought under paragraph (5), the Minister must make an application in accordance with Rule 16B/13.

16B/7 Review application – lodging and service of evidence

- (1) Where the TEO subject wishes to rely on evidence in support of the review application and –
 - (a) such evidence was not lodged with the Court on the making of the application; or
 - (b) such evidence was lodged with the Court on the making of the application but the TEO subject wishes to rely on further evidence,the TEO subject must lodge and serve that evidence, including any witness statement, on the Minister and any special counsel.
- (2) Where the TEO subject serves evidence in support of the application, the Minister must lodge and serve, subject to paragraph (3), any further evidence, including any witness statement, on the TEO subject and any special counsel.
- (3) Where the Minister seeks to withhold disclosure of any closed material from the TEO subject and the TEO subject's legal representative, the Minister must make an application in accordance with Rule 16B/13.

- (4) The 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.

16B/8 Hearing of proceedings

- (1) The following proceedings must be determined at a hearing –
 - (a) a review application;
 - (b) a hearing under 16B/14(2).
- (2) Where 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 contrary to the public interest, it must –
 - (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 special counsel to represent the interests of the excluded party.
- (3) The Court may conduct a hearing or part of a hearing in private for any other good reason.

16B/9 Appointment of a special counsel

- (1) Subject to paragraph (2), the Minister must immediately give notice of the proceedings to the Attorney General (who, under paragraph 10(1) of Schedule 3 to the Act, has the power to appoint special counsel), on –
 - (a) making an application under section 3(1)(b) of the Act (application for permission to impose a TEO);
 - (b) making a reference under paragraph 3(1) of Schedule 2 to the Act (reference of urgent TEO imposed without permission); or
 - (c) being served with a copy of any application, claim or notice of appeal in proceedings to which this Part applies.
- (2) Paragraph (1) applies unless –
 - (a) the Minister does not intend to –
 - (i) oppose the application, claim or appeal; or
 - (ii) withhold closed material from a relevant party; or
 - (b) special counsel has already been appointed to represent the interests of the relevant party in the proceedings and such special counsel is not prevented from communicating with that party by virtue of Rule 16A/10.
- (3) Where any proceedings to which this Part applies are pending but no special counsel has been appointed, a relevant party or the

Minister may request that the Attorney General appoint a special counsel, and failing such appointment a relevant party may apply to the Court to require such appointment.

16B/10 Role of special counsel

- (1) The functions of special counsel are to represent the interests of a relevant party by –
 - (a) making submissions to the Court at any hearing or part of a hearing from which the relevant party and the relevant party's legal representative 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.
- (2) Special counsel may communicate with the relevant party or the relevant party's legal representative at any time before the Minister serves closed material on special counsel.
- (3) After the 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 (4) or (7)(b) or with a direction of the Court pursuant to a request under paragraph (5).
- (4) Special counsel may, without directions from the Court, communicate about the proceedings with –
 - (a) the Court;
 - (b) the Minister or any person acting for the Minister;
 - (c) the Attorney General or any person acting for the Attorney General; or
 - (d) any other person, except the relevant party or the relevant 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.
- (5) Special counsel may request directions from the Court authorising special counsel to communicate with the relevant party or the relevant party's legal representative or with any other person.
- (6) Where special counsel makes a request for directions under paragraph (5) –
 - (a) the Court must notify the Minister of the request and of the content of the proposed communication and the form in which it is proposed to be made; and
 - (b) the Minister must, within a period specified by the Court, lodge with the Court and serve on special counsel notice of

any objection which the Minister has to the proposed communication or to the form in which it is proposed to be made.

- (7) Paragraph (2) does not prohibit the relevant party from communicating with special counsel after the Minister has served material on special counsel, but –
- (a) the relevant party may only communicate with special counsel in writing through the relevant party's legal representative; and
 - (b) special counsel must not reply to the communication other than in accordance with directions of the Court, except that special counsel may without such directions send a written acknowledgment of receipt to the relevant party's legal representative.

16B/11 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 any proceedings to which this Part applies.
- (2) Subject to this Part, the evidence of a witness may be given either –
 - (a) orally before the Court; or
 - (b) in writing, in which case it must be given in such manner and at such time as the Court directs.
- (3) The Court may also receive evidence in documentary or any other form.
- (4) The Court may receive evidence that would not, but for this Rule, be admissible in a court of law.
- (5) Every party is entitled to adduce evidence and to cross-examine witnesses during any hearing or part of a hearing from which that party and that party's legal representatives are not excluded.
- (6) Special counsel is entitled to adduce evidence and to cross-examine a witness only during a hearing or part of a hearing from which the relevant party and the relevant party's legal representatives are excluded.
- (7) The Court may require a witness to give evidence on oath or by solemn affirmation.

16B/12 Lodging and service of relevant material

The Minister must –

- (a) make a reasonable search for relevant material; and
- (b) lodge and serve that material in accordance with this Part.

16B/13 Permission to withhold closed material

- (1) The Minister –
 - (a) must apply to the Court for permission to withhold closed material from a relevant party or the relevant party's legal representative in accordance with this Rule; and
 - (b) may not rely on closed material at a hearing on notice unless special counsel has been appointed to represent the interests of the relevant party.
- (2) The Minister must lodge with the Court and, at such time as the Court directs, serve on special counsel –
 - (a) the closed material;
 - (b) a statement of the Minister's reasons for withholding that material from the relevant party and the relevant party's legal representatives; and
 - (c) if the Minister considers it possible to provide a summary of that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the relevant party.
- (3) The 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.

16B/14 Consideration of the Minister's objection or application

- (1) This Rule applies where the Minister has –
 - (a) objected under Rule 16/B/10(6)(b) to a proposed communication by special counsel or to the form in which it is proposed to be made; or
 - (b) applied under Rule 16B/13 for permission to withhold closed material.
- (2) The Court must fix a hearing for the Minister and special counsel to make oral representations, unless –
 - (a) special counsel gives notice that he or she does not challenge the application or objection;
 - (b) the Court has previously considered –
 - (i) an objection under Rule 16/B/10(6)(b) to the same or substantially the same proposed communication; or
 - (ii) an application under Rule 16B/13(1) for permission to withhold the same or substantially the same material;and is satisfied that it would be just to give permission or uphold the objection without a hearing; or
 - (c) the Minister and special counsel consent to the Court deciding the objection or application without a hearing.

- (3) If special counsel does not challenge the objection or the application, he or she must give notice of that fact to the Court and the Minister no later than the end of –
 - (a) 14 days after the date on which the Minister serves on special counsel the notice under Rule 16/B/10(6)(b) or the material under Rule 16B/13(2); or
 - (b) such other period as the Court may direct.
- (4) Where the Court fixes a hearing under this Rule, the Minister and special counsel must before the hearing lodge with the Court a schedule identifying the issues which cannot be agreed between them, which must also –
 - (a) give brief reasons for their contentions in relation to each issue; and
 - (b) set out any proposals for the Court to resolve those issues.
- (5) A hearing under this Rule shall take place in the absence of the relevant party and the relevant party's legal representative.
- (6) Where the Court gives permission to the Minister to withhold sensitive material, the Court must –
 - (a) consider whether to direct the Minister to serve a summary of that material on the relevant party and the relevant party's legal representative; but
 - (b) ensure that any such summary does not contain material the disclosure of which would be contrary to the public interest.
- (7) Where the Court has not given permission to the Minister to withhold sensitive material from, or has directed the Minister to serve a summary of that material on, the relevant party and the relevant party's legal representative –
 - (a) the Minister shall not be required to serve that material or summary; but
 - (b) if the Minister does not do so, at a hearing on notice the Court may –
 - (i) if it considers that the material or anything that is required to be summarized might be of assistance to the relevant party in relation to a matter under consideration by the Court, direct that the matter is withdrawn from its consideration or that the Minister makes such concessions or takes such other steps as the Court may direct; and
 - (ii) in any other case, direct that the Minister must not rely in the proceedings on that material or (as the case may be) on what is required to be summarized.
- (8) The Court must give permission to the Minister to withhold sensitive material where it considers that disclosure of that material would be contrary to the public interest.

16B/15 Order of lodging and serving material and written submissions

Subject to any directions given by the Court, the parties must lodge and serve any material and written submissions, and special counsel must lodge and serve any written submissions, in the following order –

- (a) the Minister must lodge with the Court any relevant material of which the Minister is aware;
- (b) the Minister must serve on –
 - (i) the relevant party or the relevant party’s legal representative; and
 - (ii) special counsel (as soon as counsel is appointed) or those instructing special counsel,any open material;
- (c) the relevant party must lodge with the Court and serve on the Minister and special counsel (if appointed) or those instructing special counsel any written evidence which the relevant party wishes the Court to take into account at the hearing;
- (d) the Minister must lodge with the Court any further relevant material;
- (e) the Minister must serve on –
 - (i) the relevant party or the relevant party’s legal representative; and
 - (ii) special counsel (as soon as counsel is appointed) or those instructing special counsel,any open material lodged with the Court under sub-paragraph (d);
- (f) the Minister must serve on special counsel (if appointed) any closed material;
- (g) the parties and special counsel (if appointed) must lodge and serve any written submissions as directed by the Court.

16B/16 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 person a notice which states –
 - (a) the respect in which that person 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 before it if that person fails to comply with the direction within that time limit.
- (2) Where a party or special counsel fails to comply with the direction after such a notice, the Court may proceed in accordance with paragraph (1)(c).

16B/17 Judgments

- (1) Where the Court gives judgment in any proceedings to which this Part applies, it may withhold any, or any part, of its reasons if and to the extent that it is not possible to give those 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 must serve on the Minister and special counsel a separate written judgment giving those reasons.

16B/18 Application by the Minister for reconsideration of decision

- (1) If the Court proposes, in any proceedings to which this Part applies, to serve on a relevant party –
 - (a) notice of any order or direction made or given in the absence of the Minister; or
 - (b) any written judgment;then before the Court serves any such notice or judgment on the relevant party, it must first serve notice on the Minister of its intention to do so.
- (2) The Minister may, within 5 days of being served with notice under paragraph (1), apply to the Court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if the Minister considers that –
 - (a) the Minister’s compliance with the order or direction; or
 - (b) the notification to the relevant party of any matter contained in the judgment, order or direction,would cause information to be disclosed contrary to the public interest.
- (3) Where the Minister makes an application under paragraph (2), the Minister must at the same time serve on special counsel (if appointed) –
 - (a) a copy of the application; and
 - (b) a copy of the notice served on the Minister pursuant to paragraph (1).
- (4) Rule 16B/14, except for paragraphs (6) and (7) of that Rule, applies where special counsel has been appointed and with any necessary modifications to the consideration of an application under paragraph (2) of this Rule.
- (5) The Court must not serve notice or a written judgment on the relevant party as mentioned in paragraph (1) before the time for the Minister or relevant person to make an application under paragraph (2) has expired.

16B/19 Applications for anonymity

- (1) The TEO subject or the Minister may apply for an order requiring anonymity for the TEO subject.
- (2) An application under paragraph (1) may be made at any time, irrespective of whether any TEO proceedings have been commenced.
- (3) An application may be made without notice to the other party.
- (4) The reference in this Rule to an order requiring anonymity for the TEO subject is to be construed in accordance with paragraph 6(3) of Schedule 3 to the Act.

16B/20 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.”.

6 Part 18 amended

- (1) Part 18 of the principal Rules shall be amended in accordance with this Rule.
- (2) In Rule 18/4(3), for sub-paragraph (g) substitute –
“(g) exhibit at the rear of the document evidence that the appropriate stamp duty under the Stamp Duties and Fees (Jersey) Law 1998¹⁵ has been or will be paid;”.
- (3) In Rule 18/4A(3), for sub-paragraph (d) substitute –
“(d) exhibit at the rear of the form evidence that the appropriate stamp duty under the Stamp Duties and Fees (Jersey) Law 1998 has been or will be paid;”.
- (4) In Rule 18/9(2), for sub-paragraph (g) substitute –
“(g) at the rear of the contract, evidence must be exhibited that the appropriate stamp duty under the Stamp Duties and Fees (Jersey) Law 1998 has been or will be paid.”.

7 Schedule 1 amended

In Schedule 1 to the principal Rules, references shall be inserted in the appropriate numerical order to the following Rules –

Rule 14A/10(2)(e)

Rule 14A/13(2)

Rule 15B/1(2)(c)

Rule 16A/1(1)

Rule 16B/1(1)

Rule 16B/5(1).

8 Schedule 3 inserted

After Schedule 2 to the principal Rules there shall be inserted the following Schedule –

“SCHEDULE 3

(Rule 14A/14)

**OATH OF DELEGATE UNDER THE CAPACITY AND SELF-
DETERMINATION (JERSEY) LAW 2016**

You swear and promise before God that well and faithfully you will discharge the duties of delegate under the Capacity and Self-Determination (Jersey) Law 2016¹⁶ to which you have been appointed.”.

9 Citation and commencement

These Rules may be cited as the Royal Court (Amendment No. 23) Rules 2018 and shall come into force on 1st October 2018.

A.J. CLARKE

Judicial Greffier

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- 1 *chapter 07.770*
 - 2 *L.29/2016*
 - 3 *L.30/2016*
 - 4 *L.24/2017*
 - 5 *chapter 07.770.72*
 - 6 *chapter 04.720*
 - 7 *L.30/2016*
 - 8 *chapter 12.230*
 - 9 *L.30/2016*
 - 10 *chapter 12.200*
 - 11 *L.29/2016*
 - 12 *L.29/2016*
 - 13 *L.30/2016*
 - 14 *L.24/2017*
 - 15 *chapter 24.960*
 - 16 *L.30/2016*