



Ministry
of Justice

Report on use of closed material procedure (from 25 June 2015 to 24 June 2016)

November 2016

Report on use of closed material procedure (from 25 June 2015 to 24 June 2016)

Presented to Parliament pursuant to Section 12 of the Justice and Security Act 2013

November 2016



© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at HumanRights@justice.gsi.gov.uk.

Print ISBN 9781474138093

Web ISBN 9781474138109

ID 14101611 11/16

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

Contents

Report on use of closed material procedure (from 25 June 2015 to 24 June 2016)	3
Applications	4
Declarations	5
Revocations	6
Final Judgments	7
Additional Information	8

Report on use of closed material procedure (from 25 June 2015 to 24 June 2016)

Section 12(1) of the Justice and Security Act 2013 (“the Act”) requires the Secretary of State to prepare (and lay before Parliament) a report on the use of the closed material procedure (CMP) under section 6 of that Act. Under section 12(4) of the Act, the report must be prepared and laid before Parliament as soon as reasonably practicable after the end of the twelve month period to which the report relates.

The report is submitted in the form of the tables below. The first set of tables (“Applications”, “Declarations”, “Revocations”, “Final Judgments”) lists numbers, as prescribed by section 12(2) of the Act. The second set of tables (“Additional Information”) provides the names of the cases referred to in the first set; this additional information is provided at the discretion of the Secretary of State under section 12(3) of the Act.

This is the third annual report on this subject and covers the period from 25 June 2015 to 24 June 2016.

Applications

<u>Applications for a declaration</u> that a CMP application may be made in proceedings during the reporting period	
Made by the Secretary of State	8
Made by persons other than the Secretary of State	4
<u>Applications for a revocation of a declaration</u> made by a court that a CMP application may be made in proceedings during the reporting period	
Made by the Secretary of State	0
Made by persons other than the Secretary of State	0

Declarations

<u>Declarations</u> that a CMP application may be made in proceedings during the reporting period	
in response to applications made by the Secretary of State during the reporting period	3
in response to applications made by the Secretary of State during previous reporting periods	4
in response to applications made by persons other than the Secretary of State during the reporting period	0
in response to applications made by persons other than the Secretary of State during previous reporting periods	0
of the court's own motion	0

Revocations

<u>Revocations</u> of declarations for CMP during the reporting period	
in response to applications made by the Secretary of State during the reporting period	0
in response to applications made by the Secretary of State during previous reporting periods	0
in response to applications made by persons other than the Secretary of State during the reporting period	0
in response to applications made by persons other than the Secretary of State during previous reporting periods	0
of the court's own motion	0

Final Judgments

<p><u>Final judgments which are closed judgments –</u> made regarding the outcome of the application for a CMP under section 6 Justice and Security Act 2013 proceedings during the reporting period.</p>	0
<p><u>Final judgments which are NOT closed judgments –</u> made regarding the outcome of the application for a CMP under section 6 Justice and Security Act 2013 proceedings during the reporting period.</p>	6
<p><u>Final judgments which are closed judgments –</u> made to determine substantive proceedings.</p>	0
<p><u>Final judgments which are NOT closed judgments –</u> made to determine substantive proceedings.</p>	0

Additional Information

APPLICATIONS	Application made by the Secretary of State?	Defendant(s)	Claimant(s)
<u>Applications for a declaration</u> that a CMP application may be made in proceedings during the reporting period	Yes	Secretary of State for the Home Department	TH
	Yes	Secretary of State for the Home Department	R (MR)
	Yes	Secretary of State for the Home Department	AI
	Yes	Secretary of State for the Home Department	AS
	Yes	Secretary of State for the Home Department	KCM and others
	Yes	Secretary of State for Foreign and Commonwealth Affairs and others	Khaled ¹
	Applications were made by the Secretary of State for Defence and the Police Service of Northern Ireland ²	Secretary of State for Defence, Peter Keeley and Police Service of Northern Ireland	Morley
	No ³	Police Service of Northern Ireland	Lee
	No ⁴	Police Service of Northern Ireland	Higgins/Sloan ⁵
	No ⁶	Police Service of Northern Ireland	Logan

¹ Khaled is Claimant 11 in *Kamoka and others v Secretary of State for Foreign and Commonwealth Affairs and others*.

² The first defendant, Ministry of Defence, and the third defendant, Police Service of Northern Ireland, made section 6 applications during the current reporting period.

³ The application was made by the Police Service of Northern Ireland.

⁴ The application was made by the Police Service of Northern Ireland.

⁵ The section 6 application in relation to Higgins took place during the previous reporting period. The section 6 application in relation to Sloan took place during the current reporting period. The section 6 applications for Higgins and Sloan were heard together.

⁶ The application was made by the Police Service of Northern Ireland.

APPLICATIONS	Application made by the Secretary of State?	Defendant(s)	Claimant(s)
	Yes ⁷	Police Service of Northern Ireland, Scappaticci and Secretary of State for Defence	Hodgins

DECLARATIONS	Defendant(s)	Claimant(s)
Declarations that a CMP application may be made in proceedings during the reporting period.	Secretary of State for Foreign and Commonwealth Affairs and others	Kamoka and others ⁸
	Secretary of State for Defence & Secretary of State for Foreign and Commonwealth Affairs	R (KAB) ⁹
	Secretary of State for the Home Department	XH ¹⁰
	Secretary of State for the Home Department	R (MR) ¹¹
	Secretary of State for the Home Department	AI ¹²
	Secretary of State for Northern Ireland	McCafferty ¹³
	Secretary of State for Foreign and Commonwealth Affairs and others	Khaled ¹⁴

⁷ The section 6 application was made on behalf of the Secretary of State for Defence.

⁸ The declaration was made in response to an application made by the Secretary of State during previous reporting periods.

⁹ The declaration was made in response to an application made by the Secretary of State during a previous reporting period.

¹⁰ The declaration was made in response to an application made by the Secretary of State during a previous reporting period. The claimant appealed the declaration but was refused permission to appeal by the Court of Appeal. Following the Divisional Court's substantive judgment in July 2016, the Special Advocates have made an application to revoke the section 6 declaration. This application will fall within the next reporting period.

¹¹ The declaration was made in response to an application made by the Secretary of State during this reporting period.

¹² The declaration was made in response to an application made by the Secretary of State during this reporting period.

¹³ The declaration was made in response to an application made by the Secretary of State during a previous reporting period.

¹⁴ The declaration was made in response to an application made by the Secretary of State during this reporting period.

<u>FINAL JUDGMENTS</u> made regarding the outcome of the application for a CMP declaration	Defendant(s)	Claimant(s)
<u>Final judgments which are NOT closed judgments</u> , given under section 6 Justice and Security Act 2013 proceedings during the reporting period.	Secretary of State for Foreign and Commonwealth Affairs	R (Sarkandi & Others) ¹⁵
	Secretary of State for the Home Department	McGartland and Asher ¹⁶
	Secretary of State for Foreign and Commonwealth Affairs and others	Kamoka and others ¹⁷
	Secretary of State for the Home Department	XH ¹⁸
	Secretary of State for the Home Department	AI ¹⁹
	Secretary of State for Northern Ireland	McCafferty ²⁰

¹⁵ This judgment was on an appeal against a decision to make a CMP declaration under section 6 Justice and Security Act 2013 in the previous reporting period. The substantive proceedings have now been withdrawn following a Notice of Discontinuance served on 24 June 2016.

¹⁶ There were two open judgments in the reporting period 25 June 2015 to 24 June 2016 (that is, the Court of Appeal decision of 14 July 2015 and the Supreme Court decision of 8 December 2015), both concerning an appeal against a decision to make a CMP declaration under section 6 Justice and Security Act in a previous reporting period.

¹⁷ Following the CMP declaration, there was a successful application to strike out the claims. That order is currently the subject of an appeal; the judgment thereon is expected to be included in the next annual report.

¹⁸ The judgment concerned the outcome of the application for a CMP under section 6 Justice and Security Act 2013 proceedings. The Claimants sought to appeal the judgment. Permission to appeal was refused by the Court of Appeal.

¹⁹ The judgment concerned the outcome of the application for a CMP under section 6 Justice and Security Act 2013 proceedings. The judgment is not being appealed.

²⁰ The judgment concerned the outcome of the application for a CMP under section 6 Justice and Security Act 2013 proceedings. The judgment is not being appealed.

ISBN 978-1-4741-3809-3



9 781474 138093