



Justice and Security Act 2013

2013 CHAPTER 18

PART 2

DISCLOSURE OF SENSITIVE MATERIAL

“Norwich Pharmacal” and similar jurisdictions

17 Disclosure proceedings

- (1) This section applies where, by way of civil proceedings, a person (“A”) seeks the disclosure of information by another person (“B”) on the grounds that—
 - (a) wrongdoing by another person (“C”) has, or may have, occurred,
 - (b) B was involved with the carrying out of the wrongdoing (whether innocently or not), and
 - (c) the disclosure is reasonably necessary to enable redress to be obtained or a defence to be relied on in connection with the wrongdoing.
- (2) A court may not, in exercise of its residual disclosure jurisdiction, order the disclosure of information sought (whether that disclosure would be to A or to another person) if the information is sensitive information.
- (3) “Sensitive information” means information—
 - (a) held by an intelligence service,
 - (b) obtained from, or held on behalf of, an intelligence service,
 - (c) derived in whole or part from information obtained from, or held on behalf of, an intelligence service,
 - (d) relating to an intelligence service, or
 - (e) specified or described in a certificate issued by the Secretary of State, in relation to the proceedings, as information which B should not be ordered to disclose.

Status: This is the original version (as it was originally enacted).

- (4) The Secretary of State may issue a certificate under subsection (3)(e) only if the Secretary of State considers that it would be contrary to the public interest for B to disclose—
- (a) the information,
 - (b) whether the information exists, or
 - (c) whether B has the information.
- (5) For the purposes of subsection (4) a disclosure is contrary to the public interest if it would cause damage—
- (a) to the interests of national security, or
 - (b) to the interests of the international relations of the United Kingdom.
- (6) In this section—
- “enactment” means an enactment whenever passed or made and includes an enactment contained in—
- (a) an Act of the Scottish Parliament,
 - (b) Northern Ireland legislation, or
 - (c) a Measure or Act of the National Assembly for Wales,
- “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006,
- “information” includes—
- (a) information contained in any form of document or stored in any other way, and
 - (b) alleged information,
- “intelligence service” means—
- (a) the Security Service,
 - (b) the Secret Intelligence Service,
 - (c) the Government Communications Headquarters, or
 - (d) any part of Her Majesty’s forces, or of the Ministry of Defence, which engages in intelligence activities,
- “obtained” means obtained directly or indirectly,
- “residual disclosure jurisdiction” means any jurisdiction to order the disclosure of information which is not specifically conferred as such a jurisdiction by or under an enactment.
- (7) This section—
- (a) enables the Secretary of State to issue a certificate under subsection (3)(e) where the Secretary of State is B as it enables the Secretary of State to issue such a certificate where another person is B, and
 - (b) does not restrict any other right or privilege that the Secretary of State can claim in order to resist an application for the disclosure of information.

18 Review of certification

- (1) Where the Secretary of State has issued a certificate under section 17(3)(e) in relation to proceedings, any party to the proceedings may apply to the relevant court to set aside the decision on the ground in subsection (2).

- (2) That ground is that the Secretary of State ought not to have determined, in relation to the information specified or described in the certificate, that a disclosure by B as mentioned in section 17(4) would be contrary to the public interest.
- (3) In determining whether the decision to issue the certificate should be set aside on the ground in subsection (2), the relevant court must apply the principles which would be applied in judicial review proceedings.
- (4) Proceedings arising by virtue of this section are to be treated as section 6 proceedings for the purposes of sections 8 to 14.
- (5) Sections 8 to 14 apply in relation to proceedings treated as section 6 proceedings by subsection (4) as if—
 - (a) the Secretary of State were the relevant person, and
 - (b) the references to the interests of national security in sections 8, 11 and 13 were references to the interests of national security or the interests of the international relations of the United Kingdom.
- (6) In this section “relevant court” means—
 - (a) if the court seised of the proceedings in relation to which the certificate has been issued is a county court, the High Court,
 - (b) if the court seised of those proceedings is the sheriff, the Court of Session, and
 - (c) in any other case, the court seised of those proceedings.