

SCHEDULES

SCHEDULE 3

Section 56

EXCEPTIONS TO SECTION 56

Introductory

- 1 This Schedule contains—
- (a) exceptions to the exclusion by section 56(1) of certain matters from legal proceedings, and
 - (b) limitations on those exceptions where that exclusion will still apply.

Disclosures of lawfully intercepted communications

- 2 (1) Section 56(1)(a) does not prohibit the disclosure of any content of a communication, or any secondary data obtained from a communication, if the interception of that communication was lawful by virtue of any of the following provisions—
- (a) sections 6(1)(c) and 44 to 52;
 - (b) sections 1(5)(c), 3 and 4 of the Regulation of Investigatory Powers Act 2000;
 - (c) section 1(2)(b) and (3) of the Interception of Communications Act 1985.
- (2) Where any disclosure is proposed to be, or has been, made on the grounds that it is authorised by sub-paragraph (1), section 56(1) does not prohibit the doing of anything in, or for the purposes of, so much of any proceedings as relates to the question whether that disclosure is or was so authorised.

Disclosures of convictions for certain offences

- 3 Section 56(1)(b) does not prohibit the doing of anything that discloses any conduct of a person for which that person has been convicted of—
- (a) an offence under section 3(1), 43(7), 59 or 155,
 - (b) an offence under section 1(1) or (2), 11(7) or 19 of the Regulation of Investigatory Powers Act 2000, or
 - (c) an offence under section 1 of the Interception of Communications Act 1985.

Proceedings before the Investigatory Powers Tribunal etc.

- 4 Section 56(1) does not apply in relation to—
- (a) any proceedings before the Investigatory Powers Tribunal,
 - (b) any proceedings on an appeal under section 67A of the Regulation of Investigatory Powers Act 2000 (appeal against decisions of the Tribunal etc.), or
 - (c) any proceedings arising out of such an appeal.

Status: This is the original version (as it was originally enacted).

Proceedings before Special Immigration Appeals Commission

- 5 (1) Section 56(1) does not apply in relation to—
- (a) any proceedings before the Special Immigration Appeals Commission, or
 - (b) any proceedings arising out of proceedings before that Commission.
- (2) But sub-paragraph (1) does not permit the disclosure of anything to—
- (a) the appellant or (as the case may be) applicant to the Special Immigration Appeals Commission, or
 - (b) any person who—
 - (i) represents that appellant or applicant for the purposes of the proceedings, and
 - (ii) does so otherwise than by virtue of appointment under section 6 of the Special Immigration Appeals Commission Act 1997.

Proceedings before Proscribed Organisations Appeal Commission

- 6 (1) Section 56(1) does not apply in relation to—
- (a) any proceedings before the Proscribed Organisations Appeal Commission, or
 - (b) any proceedings arising out of proceedings before that Commission.
- (2) But sub-paragraph (1) does not permit the disclosure of anything to any of the following—
- (a) the applicant to the Commission;
 - (b) the organisation concerned (if different);
 - (c) any person designated under paragraph 6 of Schedule 3 to the Terrorism Act 2000 to conduct the proceedings on behalf of that organisation;
 - (d) any person who—
 - (i) represents that appellant or that organisation for the purposes of the proceedings, and
 - (ii) does so otherwise than by virtue of an appointment under paragraph 7 of that Schedule.

Closed material proceedings

- 7 (1) Section 56(1) does not apply in relation to any section 6 proceedings within the meaning given by section 14(1) of the Justice and Security Act 2013 (certain civil proceedings in which closed material applications may be made).
- (2) But sub-paragraph (1) does not permit a prohibited section 6 disclosure.
- (3) In the case of section 6 proceedings where the only relevant person is the Secretary of State, a “prohibited section 6 disclosure” means a disclosure of anything to—
- (a) any person, other than the Secretary of State, who is or was a party to the proceedings, or
 - (b) any person who—
 - (i) represents such a person for the purposes of the proceedings, and
 - (ii) does so otherwise than by virtue of appointment as a special advocate.

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

- (4) In the case of section 6 proceedings where the Secretary of State is not the only relevant person, or is not a relevant person but is a party to the proceedings, a “prohibited section 6 disclosure” means a disclosure of anything to—
- (a) any person, other than the relevant person concerned or the Secretary of State, who is or was a party to the proceedings, or
 - (b) any person who—
 - (i) represents a person within paragraph (a) for the purposes of the proceedings, and
 - (ii) does so otherwise than by virtue of appointment as a special advocate.
- (5) In this paragraph “relevant person”, in relation to section 6 proceedings, has the meaning given by section 14(1) of the Justice and Security Act 2013.

TPIM proceedings

- 8 (1) Section 56(1) does not apply in relation to—
- (a) any TPIM proceedings, or
 - (b) any proceedings arising out of any TPIM proceedings.
- (2) But sub-paragraph (1) does not permit the disclosure of anything to—
- (a) any person, other than the Secretary of State, who is or was a party to the proceedings, or
 - (b) any person who—
 - (i) represents such a person for the purposes of the proceedings, and
 - (ii) does so otherwise than by virtue of appointment as a special advocate under Schedule 4 to the Terrorism Prevention and Investigation Measures Act 2011.
- (3) In this paragraph “TPIM proceedings” has the same meaning as in the Terrorism Prevention and Investigation Measures Act 2011.

TEO proceedings

- 9 (1) Section 56(1) does not apply in relation to—
- (a) any TEO proceedings, or
 - (b) any proceedings arising out of any TEO proceedings.
- (2) But sub-paragraph (1) does not permit the disclosure of anything to—
- (a) any person, other than the Secretary of State, who is or was a party to the proceedings, or
 - (b) any person who—
 - (i) represents such a person for the purposes of the proceedings, and
 - (ii) does so otherwise than by virtue of appointment as a special advocate under Schedule 3 to the Counter-Terrorism and Security Act 2015.
- (3) In this paragraph “TEO proceedings” has the meaning given by paragraph 1 of Schedule 3 to the Counter-Terrorism and Security Act 2015 (temporary exclusion orders: proceedings).

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

Proceedings relating to freezing of terrorist assets etc.

- 10 (1) Section 56(1) does not apply in relation to—
- (a) any financial restrictions proceedings, or
 - (b) any proceedings arising out of such proceedings.
- (2) In this paragraph “financial restrictions proceedings” has the meaning given by section 65 of the Counter-Terrorism Act 2008.
- 11 Section 56(1) does not apply in relation to any proceedings—
- (a) on an appeal under section 26, or an application under section 27, of the Terrorist Asset-Freezing etc. Act 2010 (appeals and reviews by the court), or
 - (b) on a claim arising from any matter to which such an appeal or application relates,
- or any proceedings arising out of such proceedings.
- 12 But neither paragraph 10 nor paragraph 11 permits the disclosure of anything to—
- (a) any person, other than the Treasury, who is or was a party to the proceedings, or
 - (b) any person who—
 - (i) represents such a person for the purposes of the proceedings, and
 - (ii) does so otherwise than by virtue of appointment as a special advocate.

Proceedings relating to release of prisoners etc. in Northern Ireland

- 13 (1) Section 56(1) does not apply in relation to—
- (a) any proceedings before—
 - (i) the Parole Commissioners for Northern Ireland, or
 - (ii) any Sentence Review Commissioners appointed under section 1 of the Northern Ireland (Sentences) Act 1998, or
 - (b) any proceedings arising out of such proceedings.
- (2) But sub-paragraph (1) does not permit the disclosure of anything to—
- (a) any person, other than the Secretary of State, who is or was a party to the proceedings, or
 - (b) any person who—
 - (i) represents such a person for the purposes of the proceedings, and
 - (ii) does so otherwise than by virtue of appointment as a special advocate.

Employment or industrial tribunal proceedings

- 14 (1) Section 56(1) does not apply in relation to any proceedings before an employment tribunal where the applicant, or the applicant’s representatives, are excluded for all or part of the proceedings pursuant to—
- (a) a direction to the tribunal by virtue of section 10(5)(b) or (c) of the Employment Tribunals Act 1996 (exclusion from Crown employment proceedings by direction of Minister in interests of national security), or
 - (b) a determination of the tribunal by virtue of section 10(6) of that Act (determination by tribunal in interests of national security).

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

- (2) Section 56(1) does not apply in relation to any proceedings before an industrial tribunal in Northern Ireland where the applicant, or the applicant's representatives, are excluded for all or part of the proceedings pursuant to—
- (a) a direction to the tribunal by virtue of Article 12(5)(b) or (c) of the Industrial Tribunals (Northern Ireland) Order 1996 (S.I. 1996/1921 (N.I. 18)) (exclusion from Crown employment proceedings by direction of Minister in interests of national security), or
 - (b) a determination of the tribunal by virtue of Article 12(6) of that Order (determination by tribunal in interests of national security).
- (3) Section 56(1) does not apply in relation to any proceedings arising out of proceedings within sub-paragraph (1) or (2).
- 15 But paragraph 14 does not permit the disclosure of anything to—
- (a) the person who is or was the applicant in the proceedings before the employment or industrial tribunal, or
 - (b) any person who—
 - (i) represents that person for the purposes of any proceedings within paragraph 14, and
 - (ii) does so otherwise than by virtue of appointment as a special advocate.

Proceedings relating to dismissal for certain offences

- 16 Section 56(1) does not prohibit anything done in, for the purposes of, or in connection with, so much of any legal proceedings as relates to the fairness or unfairness of a dismissal on the following grounds—
- (a) any conduct constituting an offence under section 3(1), 43(7), 59 or 155;
 - (b) any conduct taking place before the coming into force of this paragraph and constituting—
 - (i) an offence under section 1(1) or (2), 11(7) or 19 of the Regulation of Investigatory Powers Act 2000, or
 - (ii) an offence under section 1 of the Interception of Communications Act 1985.

Proceedings on appeals relating to claims of discrimination in Northern Ireland

- 17 (1) Section 56(1) does not apply in relation to any proceedings on an appeal under Article 80(2) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (S.I. 1998/3162 (N.I. 21)) where—
- (a) the appeal relates to a claim of discrimination in contravention of Part 3 of that Order (employment cases) and to a certificate of the Secretary of State that the act concerned was justified for the purpose of safeguarding national security, and
 - (b) a party to the appeal, or the party's representatives, are excluded for all or part of the proceedings by virtue of section 91(4)(b) of the Northern Ireland Act 1998.
- (2) Section 56(1) does not apply in relation to any proceedings arising out of proceedings within sub-paragraph (1).
- 18 But paragraph 17 does not permit the disclosure of anything to—

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

- (a) any person who is or was excluded from all or part of the proceedings mentioned in paragraph 17(1), or
- (b) any person who—
 - (i) represents such a person for the purposes of any proceedings within paragraph 17, and
 - (ii) does so otherwise than by virtue of appointment as a special advocate.

Civil proceedings for enforcement of duty to assist with implementation of warrants

- 19 Section 56(1) does not apply in relation to any civil proceedings under section 43(8) of this Act or section 11(8) of the Regulation of Investigatory Powers Act 2000 (enforcement of duty of operators to assist with implementation of warrants).

Proceedings for certain offences

- 20 (1) Section 56(1) does not apply in relation to any proceedings for a relevant offence.
- (2) “Relevant offence” means—
- (a) an offence under any provision of this Act;
 - (b) an offence under section 1 of the Interception of Communications Act 1985;
 - (c) an offence under any provision of the Regulation of Investigatory Powers Act 2000;
 - (d) an offence under section 47 or 48 of the Wireless Telegraphy Act 2006;
 - (e) an offence under section 83 or 84 of the Postal Services Act 2000;
 - (f) an offence under section 4 of the Official Secrets Act 1989 relating to any such information, document or article as is mentioned in subsection (3)(a) or (c) of that section;
 - (g) an offence under section 1 or 2 of the Official Secrets Act 1911 relating to any sketch, plan, model, article, note, document or information which—
 - (i) incorporates, or relates to, the content of any intercepted communication or any secondary data obtained from a communication, or
 - (ii) tends to suggest that any interception-related conduct has or may have occurred or may be going to occur;
 - (h) an offence of perjury committed in the course of any relevant proceedings;
 - (i) an offence of attempting or conspiring to commit an offence falling within any of paragraphs (a) to (h);
 - (j) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence falling within any of those paragraphs;
 - (k) an offence of aiding, abetting, counselling or procuring the commission of an offence falling within any of those paragraphs;
 - (l) contempt of court committed in the course of, or in relation to, any relevant proceedings.
- (3) In this paragraph—
- “intercepted communication” and “interception-related conduct” have the same meaning as in section 56;
 - “relevant proceedings” means any proceedings mentioned in paragraphs 4 to 19.

Disclosures to prosecutors and judges

- 21 (1) Nothing in section 56(1) prohibits—
- (a) a disclosure to a person (“P”) conducting a criminal prosecution that is made for the purpose only of enabling P to determine what is required of P by P’s duty to secure the fairness of the prosecution, or
 - (b) a disclosure to a relevant judge in a case in which the judge has ordered the disclosure to be made to the judge alone.
- (2) A relevant judge may order a disclosure under sub-paragraph (1)(b) only if the judge considers that the exceptional circumstances of the case make the disclosure essential in the interests of justice.
- (3) Where in any criminal proceedings—
- (a) a relevant judge orders a disclosure under sub-paragraph (1)(b), and
 - (b) in consequence of that disclosure, the judge considers that there are exceptional circumstances requiring the judge to make a direction under this sub-paragraph,
- the judge may direct the person conducting the prosecution to make for the purposes of the proceedings any admission of fact which the judge considers essential in the interests of justice.
- (4) But nothing in any direction under sub-paragraph (3) may authorise or require anything to be done in contravention of section 56(1).
- (5) In this paragraph “relevant judge” means—
- (a) any judge of the High Court or of the Crown Court or any Circuit judge,
 - (b) any judge of the High Court of Justiciary or any sheriff,
 - (c) in relation to proceedings before the Court Martial, the judge advocate for those proceedings, or
 - (d) any person holding a judicial office that entitles the person to exercise the jurisdiction of a judge falling within paragraph (a) or (b).

Disclosures to inquiries and inquests

- 22 (1) Nothing in section 56(1) prohibits—
- (a) a disclosure to the panel of an inquiry held under the Inquiries Act 2005, or
 - (b) a disclosure to a person appointed as legal adviser to such an inquiry,
- where, in the course of the inquiry, the panel has ordered the disclosure to be made to the panel alone or (as the case may be) to the panel and any person appointed as legal adviser to the inquiry.
- (2) The panel of an inquiry may order a disclosure under sub-paragraph (1) only if it considers that the exceptional circumstances of the case make the disclosure essential to enable the inquiry to fulfil its terms of reference.
- (3) Any reference in this paragraph to a person appointed as legal adviser to an inquiry is a reference to a person appointed as solicitor or counsel to the inquiry.
- 23 (1) Section 56(1) does not apply in relation to any restricted proceedings of an inquiry held under the Inquiries Act 2005.

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

- (2) Proceedings of an inquiry held under that Act are “restricted proceedings” for the purposes of this paragraph if restrictions imposed under section 19 of that Act are in force prohibiting attendance at the proceedings by any person who is not—
- (a) a member of the panel of the inquiry,
 - (b) a person appointed as legal adviser to the inquiry,
 - (c) a person who is a relevant party to the proceedings,
 - (d) a person representing such a person for the purposes of the proceedings, or
 - (e) a person performing functions necessary for the proper functioning of the proceedings.
- (3) But sub-paragraph (1) does not permit any disclosure which has not been made in accordance with paragraph 22(1).
- (4) In this paragraph “relevant party”, in relation to any proceedings of an inquiry, means—
- (a) any person making a disclosure to the panel of the inquiry, or to a person appointed as legal adviser to the inquiry, in accordance with paragraph 22(1);
 - (b) any person giving evidence to the inquiry in circumstances where, in the absence of sub-paragraph (1), the prohibition imposed by section 56(1) would be breached;
 - (c) any person whose conduct is the interception-related conduct (within the meaning of section 56) to which the disclosure or evidence relates (whether or not that conduct has in fact occurred);
 - (d) any other person to whom the subject-matter of the disclosure or evidence has been lawfully disclosed in accordance with section 58.
- (5) Any reference in this paragraph to a person appointed as legal adviser to an inquiry is to be read in accordance with paragraph 22(3).
- 24 (1) Nothing in section 56(1) prohibits—
- (a) a disclosure to a person (the “nominated person”) nominated under paragraph 3(1) of Schedule 10 to the Coroners and Justice Act 2009 (investigation by judge or former judge) to conduct an investigation into a person’s death, or
 - (b) a disclosure to a person appointed as legal adviser to an inquest forming part of an investigation conducted by the nominated person,
- where, in the course of the investigation, the nominated person has ordered the disclosure to be made to the nominated person alone or (as the case may be) to the nominated person and any person appointed as legal adviser to the inquest.
- (2) The nominated person may order a disclosure under sub-paragraph (1) only if the person considers that the exceptional circumstances of the case make the disclosure essential in the interests of justice.
- (3) In a case where a person who is not a nominated person is or has been conducting an investigation under Part 1 of the Coroners and Justice Act 2009 into a person’s death, nothing in section 56(1) prohibits—
- (a) a disclosure to the person that there is intercepted material in existence which is, or may be, relevant to the investigation;
 - (b) a disclosure to a person appointed as legal adviser to an inquest forming part of the investigation which is made for the purposes of determining—

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

- (i) whether any intercepted material is, or may be, relevant to the investigation, and
 - (ii) if so, whether it is necessary for the material to be disclosed to the person conducting the investigation.
- (4) In sub-paragraph (3) “intercepted material” means—
 - (a) any content of an intercepted communication (within the meaning of section 56), or
 - (b) any secondary data obtained from a communication.
- (5) Any reference in this paragraph to a person appointed as legal adviser to an inquest is a reference to a person appointed as solicitor or counsel to the inquest.