

SCHEDULES

SCHEDULE 2

Section 7

RESTRICTIONS ON DISCLOSURE OR USE OF INFORMATION

Introduction

- 1 (1) This Schedule applies where the disclosure or use of relevant information is restricted by an obligation of confidence.
- (2) In this Schedule, “relevant information” means information obtained by the Secretary of State (whether before or after the coming into force of this Schedule) under or in connection with a relevant contract.
- (3) “Relevant contract” means a contract entered into by the Secretary of State at any time before the vesting date for the purposes of defence procurement.

Disclosure between the parties etc

- 2 (1) The obligation does not prevent or penalise the disclosure of relevant information—
 - (a) between the Secretary of State or an authorised officer of the Secretary of State and a contractor or an employee of or service provider to a contractor,
 - (b) between a contractor and an employee of or service provider to the contractor, between one such employee and another, between one such service provider and another or between one such employee and one such service provider, or
 - (c) between a contractor or an employee of or service provider to the contractor and another contractor or an employee of or service provider to the other contractor,if the disclosure is necessary or expedient for the purposes of arrangements mentioned in section 1.
- (2) The obligation does not prevent or penalise the disclosure of relevant information—
 - (a) by a former contractor or an employee of or service provider to a former contractor to the Secretary of State or an authorised officer of the Secretary of State,
 - (b) by a former contractor or an employee of or service provider to a former contractor to a contractor or an employee of or service provider to a contractor, or
 - (c) between a former contractor and an employee of or service provider to the former contractor, between one such employee and another, between one such service provider and another or between one such employee and one such service provider,if the disclosure is necessary or expedient for the purposes of arrangements mentioned in section 1.

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- (3) The obligation does not prevent or penalise the use of relevant information disclosed to a contractor or an employee of or service provider to a contractor under this paragraph if—
- (a) the information is used by the contractor or the employee or service provider for any purpose for which the Secretary of State could have used the information, and
 - (b) the use of the information is necessary or expedient for the purposes of arrangements mentioned in section 1.

Disclosure and use for audit purposes

- 3 (1) The obligation does not prevent or penalise the disclosure of relevant information by a contractor or an employee of or service provider to a contractor, or the use of that information by the person to whom it is disclosed, if—
- (a) the disclosure is to the Comptroller and Auditor General, or a person exercising an audit function of the Comptroller’s, and the information could lawfully be disclosed to the Comptroller or that person by the Secretary of State, or
 - (b) the disclosure is to an accounting officer, or a person exercising an audit function of the officer’s, and the information could lawfully be disclosed to that officer or person by the Secretary of State.
- (2) In this paragraph—
- “accounting officer” means an officer appointed by the Treasury under section 5(6) or (8) of the Government Resources and Accounts Act 2000 (resource accounts);
- “audit function” in relation to the Comptroller and Auditor General, includes any function under Part 2 of the National Audit Act 1983 (examinations into economy, efficiency and effectiveness).

Unauthorised disclosure of information

- 4 (1) This paragraph applies where—
- (a) information is disclosed to a person in accordance with paragraph 2 or 3 (“the original disclosure”), and
 - (b) that person, or any other person to whom the information is subsequently so disclosed, discloses the information otherwise than in accordance with paragraph 2 or 3 (“the unauthorised disclosure”).
- (2) The person making the unauthorised disclosure is to be treated for all purposes as if that person were subject to the obligation which restricted the original disclosure.
- (3) But where the person making the unauthorised disclosure is an employee, the information is to be treated as if it had been disclosed by the person’s employer.

Unauthorised use of information

- 5 (1) This paragraph applies where—
- (a) information is disclosed in accordance with paragraph 2 to a person other than the Secretary of State or an authorised officer of the Secretary of State, and

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- (b) the information is used by that person otherwise than in accordance with paragraph 2(3) (“the unauthorised use”).
- (2) The person making the unauthorised use is to be treated for all purposes as if that person were subject to the obligation which restricted the use of the information by the Secretary of State.
- (3) But where the person making the unauthorised use is an employee, the information is to be treated as if it had been used by the person’s employer.

Interpretation: general

6 In this Schedule—

“ancillary services” means services certified by the Secretary of State to be services appearing to the Secretary of State to be calculated to facilitate, or to be conducive or incidental to, arrangements mentioned in section 1;

“authorised officer”, in relation to the Secretary of State, means an officer of the Secretary of State who is authorised by the Secretary of State to disclose or (as the case may be) obtain the information in question;

“former contractor” means a company which has been a contractor;

“relevant information” has the meaning given by paragraph 1(2);

“service provider”, in relation to a contractor or former contractor, means—

- (a) a person who performs ancillary services for that contractor, and
- (b) an employee of such a person.