

# DEFENCE REFORM ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1: Defence Procurement

##### ***Section 7 and Schedule 2: Restrictions on disclosure or use of information***

28. **Section 7** gives effect to Schedule 2, which contains provisions to overcome restrictions on the disclosure to and use by the contractor of confidential information (currently held by MOD and DE&S). Confidential information may be contained in, for example, technical/design information, tender documentation, contracts, performance data, and quotations. The contractor will need this information in order to carry out defence procurement services under the section 1 arrangements.
29. These provisions allow the Secretary of State to provide the contractor with access to confidential information (“relevant information”) obtained under or in connection with a contract (the “relevant contract”) with a third party entered into for the purposes of defence procurement before the vesting date (as defined in section 12). The contract itself may have come to an end before the vesting date but an obligation of confidence may nevertheless continue.
30. **Paragraph 2(1)** provides that the Secretary of State will not be prevented from or penalised for disclosing relevant information to a contractor or a service provider to a contractor (defined in paragraph 6 as someone who performs ancillary services for the contractor); a contractor will not be prevented from or penalised for disclosing that information to his employees or service provider; and, in a two company structure, between one company and the other and their employees or service providers, where it is necessary or expedient for the purpose of the arrangement. Paragraph 2(2) permits disclosure of relevant information by a former contractor or its employees or service providers to the Secretary of State, or to a new contractor or its own employees or service providers, if that disclosure is necessary for the purposes of arrangements made under section 1. Paragraph 2(3) permits the use of relevant information by a contractor, employees or service providers if the Secretary of State could have used the information and if the use of the information is necessary or expedient for the purposes of the section 1 arrangements.
31. **Paragraph 3** ensures that a contractor, its employees or its service providers are not prevented by any obligations of confidence from disclosing relevant information for audit purposes.
32. **Paragraphs 4 and 5** make provision to deal with unauthorised disclosures and unauthorised use of information by a contractor. Paragraph 4 provides that where a person discloses information otherwise than in accordance with paragraphs 2 and 3, that is an unauthorised disclosure and the person making that disclosure will be treated as if he were subject to the original obligation of confidence. If he is an employee of a contractor or service provider, the contractor or service provider will be treated as having made the unauthorised disclosure. Paragraph 5 makes the same provision in respect of unauthorised use of information.