

SCHEDULES

SCHEDULE 5

Section 38

RESTRICTIONS ON DISCLOSING INFORMATION

Information to which Schedule applies

- 1 (1) This Schedule applies to information if—
 - (a) it was obtained by the Secretary of State, an authorised person or the SSRO under or by virtue of this Part or otherwise in connection with the carrying out of functions under or by virtue of this Part, or is derived to any extent from information that was so obtained,
 - (b) it relates to the affairs of an individual or to a particular business, and
 - (c) it is of a kind specified in single source contract regulations.
- (2) Information ceases to be information to which this Schedule applies—
 - (a) in the case of information relating to the affairs of an individual, when the individual dies, and
 - (b) in the case of information relating to a particular business, on the earlier of—
 - (i) the day on which the business ceases to be carried on, and
 - (ii) the end of the period of 30 years beginning with the date on which the information was obtained by the Secretary of State, an authorised person or the SSRO.

Offence of disclosing information

- 2 (1) A person commits an offence if the person discloses information to which this Schedule applies.
- (2) Sub-paragraph (1) is subject to paragraphs 3 to 5.
- (3) A person who is guilty of an offence under sub-paragraph (1) is liable—
 - (a) on summary conviction, to imprisonment for not more than 12 months or to a fine not exceeding the statutory maximum (or both), or
 - (b) on conviction on indictment, to imprisonment for not more than two years or to a fine (or both).
- (4) The reference in sub-paragraph (3)(a) to 12 months is to be read as a reference to 6 months—
 - (a) in its application to England and Wales in relation to an offence committed before the date on which section 154(1) of the Criminal Justice Act 2003 comes into force, and
 - (b) in its application to Northern Ireland.
- (5) If section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed—

Status: This is the original version (as it was originally enacted).

- (a) section 85 of that Act (removal of limit on certain fines on conviction by magistrates' court) applies in relation to an offence under sub-paragraph (1) on and after that day as if it were a relevant offence (as defined in section 85(3) of that Act), and
- (b) regulations described in section 85(11) of that Act may amend, repeal or otherwise modify sub-paragraph (3)(a).

Disclosure with consent

- 3 Paragraph 2(1) does not apply to a disclosure made with the consent of—
- (a) the individual, or
 - (b) the person for the time being carrying on the business (or, where there are two or more such persons, all those persons).

Disclosure of information already available to public

- 4 Paragraph 2(1) does not apply to information that has been made available to the public by being disclosed in circumstances in which, or for a purpose for which, disclosure is not precluded by this Schedule.

Other permitted disclosures

- 5 (1) Paragraph 2(1) does not apply where information is disclosed—
- (a) for the purpose of facilitating the carrying out of functions of a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975),
 - (b) for the purpose of facilitating the carrying out by the SSRO of any of its functions,
 - (c) for the purpose of enabling or assisting an authorised person to carry out any of its functions,
 - (d) for the purpose of enabling or assisting a contractor to provide defence procurement services to the Secretary of State by virtue of arrangements mentioned in section 1,
 - (e) to the person from whom the information was obtained or, where that person is associated with one or more other persons, to any such associated person,
 - (f) by a person to whom the information is disclosed by virtue of paragraph (e),
 - (g) in response to a request under the Freedom of Information Act 2000,
 - (h) in connection with the investigation of a criminal offence or for the purposes of criminal proceedings,
 - (i) for the purposes of civil proceedings,
 - (j) in pursuance of an EU obligation,
 - (k) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of functions, or
 - (l) in anonymised form.
- (2) In sub-paragraph (1)(d), “contractor” and “defence procurement services” have the same meanings as in Part 1.
- (3) For the purposes of sub-paragraph (1)(l), information is disclosed in anonymised form if no individual or other person to whom the information relates can be identified from it.

Power to prohibit disclosure

- 6 (1) The Secretary of State may by order—
- (a) prohibit the disclosure of information to which this Schedule applies;
 - (b) provide that a prohibition imposed by virtue of paragraph (a) is subject to exceptions corresponding to those set out in paragraphs 3 to 5 (other than paragraph 5(1)(g));
 - (c) provide that a person who discloses information in contravention of such a prohibition commits an offence punishable—
 - (i) on summary conviction, with imprisonment for not more than 12 months or with a fine not exceeding the statutory maximum (or both), or
 - (ii) on conviction on indictment, with imprisonment for not more than two years or with a fine (or both).
- (2) The reference in sub-paragraph (1)(c)(i) to 12 months is to be read as a reference to 6 months—
- (a) in its application to England and Wales in relation to an offence committed before the date on which section 154(1) of the Criminal Justice Act 2003 comes into force, and
 - (b) in its application to Northern Ireland.
- (3) An order under sub-paragraph (1) may repeal paragraphs 2 to 5.
- (4) If section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed—
- (a) section 85 of that Act (removal of limit on certain fines on conviction by magistrates' court) applies in relation to the power under sub-paragraph (1)(c)(i) on or after that day as if it were a relevant power (as defined in section 85(3) of that Act), and
 - (b) regulations described in section 85(11) of that Act may amend, repeal or otherwise modify sub-paragraph (1)(c)(i).
- (5) An order under sub-paragraph (1) is to be made by statutory instrument.
- (6) A statutory instrument containing an order under sub-paragraph (1) may not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.