

JUSTICE AND SECURITY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Disclosure of sensitive material

Section 11: General provision about section 6 proceedings

95. *Section 11* sets out the general provisions to be included in the rules of court relating to section 6 proceedings.
96. *Subsection (1)* states that a person making the rules must have regard to the need to secure that disclosures of information are not made where they would be damaging to national security.
97. *Subsection (2)* states that rules of court may be made about the mode of proof and evidence in the proceedings; to enable or require proceedings to be determined without a hearing; and about the legal representation in the proceedings. This subsection also provides that the rules of court may restrict the particulars required to be given of reasons for decisions in the proceedings, and may enable a hearing to take place in the absence of any person. It also states that the rules may provide detail about the functions of special advocates, and enable the court to give a party to the proceedings a summary of evidence heard in the CMP. These provisions follow the models adopted in other closed material procedures such as those before SIAC.
98. *Subsection (3)* states that the references to a person in *subsection (2)* do not include a relevant person because they will not be excluded from the proceedings during a closed material procedure. Nor do they include the Secretary of State where the Secretary of State is not a relevant person but is a party to the proceedings (because the Secretary of State is not excluded from CMPs – see section 8(1)(a)(iii)).
99. *Subsection (4)* provides that the initial proceedings on whether a CMP declaration should be granted are to be treated as section 6 proceedings (meaning that sensitive material could be protected by a CMP at this preliminary stage). Similarly, it also provides that all proceedings relating to the revocation of a CMP declaration are treated as section 6 proceedings. This would include the circumstances in which the court has revoked a CMP declaration (following an application or of its own motion) and the Government is appealing this decision. It provides for such appeal proceedings to be treated as section 6 proceedings (and therefore for sensitive material in such proceedings to be protected by a CMP).
100. *Subsection (5)* defines who a “relevant person” is in relation to certain proceedings treated as section 6 proceedings. This is needed because *subsection (8)* of section 6 would not apply to these types of proceedings to determine the identity of the relevant person (because in these types of “deemed” section 6 proceedings, no declaration will have been granted under section 6).