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STATUTORY INSTRUMENTS

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**2018 No. 597**

**The Trade Secrets (Enforcement, etc.) Regulations 2018**

**Preservation of confidentiality of trade secrets in the course of proceedings**

**10.**—(1) A participant, or a participant who has access to documents which form part of the proceedings, must not use or disclose any trade secret or alleged trade secret—

- (a) which, on a duly reasoned application by an interested party or on a court's own initiative, a court by order identifies as confidential, and
- (b) of which a participant has become aware as a result of participation in the proceedings or the access.

(2) The obligation referred to in paragraph (1) remains in force after the proceedings have ended, subject to paragraph (3).

(3) The obligation in paragraph (1) ceases to exist—

- (a) where a court, by final decision, finds that the alleged trade secret does not meet the requirements of a trade secret, or
- (b) where over time the information in question becomes generally known among, or readily accessible to, persons within the circles that normally deal with that kind of information.

(4) On a duly reasoned application by a party or on a court's own initiative, a court may order any of the measures set out in paragraph (5) as may be necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of proceedings.

(5) A court may—

- (a) restrict access to any document containing a trade secret or alleged trade secret submitted by the parties or third parties, in whole or in part, to a limited number of persons,
- (b) restrict access to hearings, when trade secrets or alleged trade secrets may be disclosed, and to the record or transcript of those hearings to a limited number of persons, and
- (c) make available to a person, who is not one of the limited number of persons referred to in sub-paragraph (a) or (b), a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed or redacted.

(6) The number of persons referred to in paragraph 5(a) or (b) must be no greater than necessary to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and must include, at least, one individual from each party and the lawyers or other representatives of those parties to the proceedings.

(7) In deciding whether or not to grant the measures in paragraph (5) in accordance with paragraphs (4) and (6) and which of the measures to order and in assessing the proportionality of the measures, a court must take into account—

- (a) the need to ensure the right to an effective remedy and to a fair trial,
- (b) the legitimate interests of the parties, and
- (c) any potential harm for the parties.

(8) In this regulation—

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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“participant” means a party, a lawyer or other representative of a party, a court official, a witness, an expert or any other person participating in proceedings;

“parties”, in paragraph (7), includes, where appropriate, third parties;

“proceedings” means legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret.