

JUSTICE AND SECURITY ACT 2013

EXPLANATORY NOTES

SUMMARY

3. **Part 1** of the Act creates a new Intelligence and Security Committee of Parliament (the “ISC”), to replace the Intelligence and Security Committee created by the Intelligence Services Act 1994. The statutory remit of the ISC is expanded to include (i) a role in overseeing the wider Government intelligence community (beyond the three security and intelligence agencies (the “Agencies”)) and (ii) retrospective oversight of the operational activities of the Agencies on matters of significant national interest. In addition, the ISC is given powers to require information from the Agencies subject only to a veto by the Secretary of State rather than, as was the case under the Intelligence Services Act 1994, Agency heads. Parliament is given a more substantial role in ISC appointments.
4. **Part 1** of the Act also makes provision to expand the Intelligence Services Commissioner’s remit beyond what the Commissioner and the Interception of Communications Commissioner have previously overseen, to include an ability to oversee, at the direction of the Prime Minister, any other aspect of Agency business.
5. **Part 2** of the Act makes provision for closed material procedures in proceedings (other than those in a criminal cause or matter) before the High Court, the Court of Session, the Court of Appeal or the Supreme Court. It sets out a framework whereby the judge can allow elements of a case to be heard in closed, in addition to the open proceedings. The process broadly consists of two stages:
 - The Secretary of State or any party to the case may make an application to the court to make a declaration that the proceedings are ones in which a closed material application may be made. The court may grant a declaration following an application or of its own motion provided that certain conditions are met.
 - Once the declaration has been made, a closed material application may then be made by a party to the proceedings not to disclose specific pieces or tranches of material, except to the court, a special advocate and the Secretary of State. An application will be granted where the disclosure of that material would be damaging to the interests of national security.
6. **Part 2** also permits a closed material application to be made in certain circumstances where there is no declaration yet in place (for example, as part of the application for a declaration). This is to take account of the likely need to have a closed material procedure in order for the court to determine whether it should make a declaration that a closed material application may be made for the purposes of the main proceedings (the determination of the claim).
7. **Part 2** makes further provision for the court to review and revoke a declaration.
8. Rules of court will set out in greater detail how closed material procedures will operate.
9. **Part 2** of the Act also contains provisions extending the existing closed material procedure under the Special Immigration Appeals Commission Act 1997. The new

*These notes refer to the Justice and Security Act 2013
(c.18) which received Royal Assent on 25 April 2013*

provisions cover reviews of certain cases where the Secretary of State has decided to exclude a non-EEA national from the UK, or to refuse a certificate of naturalisation or an application for British citizenship, in reliance on information which the Secretary of State considers too sensitive to make public.

10. In addition, Part 2 of the Act provides for an amendment to the Regulation of Investigatory Powers Act 2000 to permit use of intercept evidence in closed proceedings in employment cases before tribunals across the UK.
11. Finally, Part 2 of the Act also makes provision about the courts' residual disclosure jurisdiction, the classic example of which is known as the *Norwich Pharmacal* jurisdiction, to order a person involved (however innocently) in arguable wrongdoing by another person to disclose information about the wrongdoing. The provision removes that jurisdiction in certain circumstances if the information is sensitive. Sensitive information in this context, means, broadly, information which relates to, has come from or is held by the Agencies or defence intelligence units, or whose disclosure the Secretary of State has certified would damage the interests of national security or the international relations of the United Kingdom. Any party to the proceedings may apply to the court to set aside a certificate issued by the Secretary of State and Part 2 provides automatically for a closed material procedure to consider any such application.