

JUSTICE AND SECURITY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Disclosure of sensitive material

Section 18: Review of certification

131. *Section 18(1)* provides that a party to the proceedings in which the Secretary of State has issued a certificate under section 17(3)(e) (that is, a certificate in relation to sensitive material other than intelligence service information), may apply to the court for the certificate to be set aside. If such an application is successful, the prohibition on the court ordering disclosure of the information referred to in the certificate would not apply and disclosure could therefore be ordered under the court's usual residual disclosure jurisdiction if the court took the view that the *Norwich Pharmacal* criteria were met.
132. *Subsection (2)* provides that the application to set aside the certificate may only be made on the ground that the Secretary of State was wrong to determine that disclosure of the information (or its existence or the fact of it being held) would be damaging to the interests of national security or the international relations of the United Kingdom.
133. *Subsection (3)* provides that in determining whether the certificate should be set aside, the court is to apply judicial review principles.
134. *Subsections (4) and (5)* have the effect that proceedings on a review of the certificate may take place within a CMP: the proceedings are "treated as section 6 proceedings" which means that a person may make an application for a CMP under section 8(1)(a). Proceedings arising from this section are therefore also included in the scope of sections 12 and 13 regarding reporting and review of the operation of CMP provisions.
135. *Subsection (5)* provides that, in these "deemed" section 6 proceedings, the Secretary of State is to be treated as the 'relevant person' and also that the references to the interests of national security in sections 8, 11 and 13 should be treated as references to the interests of national security or the international relations of the United Kingdom. This means that, unlike for most section 6 proceedings, a closed material application under section 8 may be made on the basis that the disclosure of the material would be damaging to the international relations of the United Kingdom (as such material may be included in a certificate). It also means that for the purposes of section 13 (review of sections 6 to 11), where the reviewer's report discusses closed material proceedings relating to a *Norwich Pharmacal* certification, the Secretary of State can exclude material from the reviewer's report that he considers damaging to either national security or the international relations of the United Kingdom