

11KBW

The Trade Secrets Regulations

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- The Trade Secrets (Enforcement, etc.) Regulations 2018
- Draft
- England, Wales, Scotland, Northern Ireland
- Implementing Directive 2016/943

- Directive adopted on in June 2016
- Came into force 5 July 2016
- Consultation closed on 16 March 2018
- Implementation required by 9 June 2018
- Europe-wide harmonisation

- Trade Secret means confidential information which:
- Is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

- Has commercial value because it is secret;
- Has been subject ones so able steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

- Proceedings in respect of breach of confidence in relation to a trade secret may not be brought after 6 years
- From the later of the breach or the day of knowledge of the trade secret holder

Date of knowledge of the trade secret holder **11KBW**

- Know or reasonably be expected to know
- Of the infringer's behaviour
- That the behaviour is a breach of confidence
- That loss or damage has arisen and
- The identity of the wrongdoer

- Where the court identifies an alleged trade secret, including on its own initiative, participants in the proceedings must not disclose that matter
- Obligation ceases to apply if the court determines that it is not in fact a trade secret or if the information becomes generally known or readily accessible

- The court can take such steps as it thinks fit to support the obligation
- Including restricting access to a document
- And restricting access to hearings
- And providing a non-confidential judgment

- The court may make an order making the continuation of the use, but not the disclosure of the trade secret in breach of confidence subject to the lodging of guarantees to ensure compensation to the trade secret holder

- The damages awarded must be appropriate to the actual prejudice suffered as a result of the breach of confidence
- Consider any negative economic consequences
- Non-economic factors such as moral prejudice
- Where appropriate, on the basis of royalties or fees which would have been due had the infringer obtained a licence