



# Enterprise Act 2002 (repealed)

## 2002 CHAPTER 40

### PART 9

#### INFORMATION

##### Modifications etc. (not altering text)

- C1** Pt. 9 applied (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\) \(N.I. 6\), art. 63](#); [S.R. 2003/203, art. 2, Sch.](#)  
Pt. 9 applied (20.6.2003) by [S.I. 1990/1715, reg. 5](#) (as inserted by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\), art. 2, Sch. para. 17\(5\)](#))
- C2** Pt. 9 (ss. 237-247) modified (prosp.) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\), ss. 29\(3\)-\(7\), 66](#) (with s. 6(9))

##### Textual Amendments applied to the whole legislation

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

#### *Restrictions on disclosure*

### 237 General restriction

- (1) This section applies to specified information which relates to—
  - (a) the affairs of an individual;
  - (b) any business of an undertaking.
- (2) Such information must not be disclosed—
  - (a) during the lifetime of the individual, or

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- (b) while the undertaking continues in existence, unless the disclosure is permitted under this Part.
- (3) But subsection (2) does not prevent the disclosure of any information if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene—
  - (a) that subsection;
  - (b) any other enactment or rule of law prohibiting or restricting the disclosure of the information.
- (4) Nothing in this Part authorises a disclosure of information which contravenes the Data Protection Act 1998 (c. 29).
- (5) Nothing in this Part affects the Competition Appeal Tribunal.
- (6) This Part (except section 244) does not affect any power or duty to disclose information which exists apart from this Part.

**Modifications etc. (not altering text)**

- C3** S. 237 restricted (31.10.2003) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), **ss. 115, 120**; [S.I. 2003/2681](#), **art. 2(b)**

**238 Information**

- (1) Information is specified information if it comes to a public authority in connection with the exercise of any function it has under or by virtue of—
  - (a) Part 1, 3, 4, 6, 7 or 8;
  - (b) an enactment specified in Schedule 14;
  - (c) such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.
- (2) It is immaterial whether information comes to a public authority before or after the passing of this Act.
- (3) Public authority (except in the expression “overseas public authority”) must be construed in accordance with section 6 of the Human Rights Act 1998 (c. 42).
- (4) In subsection (1) the reference to an enactment includes a reference to an enactment contained in—
  - (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation;
  - (c) subordinate legislation.
- (5) The Secretary of State may by order amend Schedule 14.
- (6) The power to make an order under subsection (5) includes power to add, vary or remove a reference to any provision of—
  - (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.
- (7) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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(8) This section applies for the purposes of this Part.

### *Permitted disclosure*

#### **239 Consent**

- (1) This Part does not prohibit the disclosure by a public authority of information held by it to any other person if it obtains each required consent.
- (2) If the information was obtained by the authority from a person who had the information lawfully and the authority knows the identity of that person the consent of that person is required.
- (3) If the information relates to the affairs of an individual the consent of the individual is required.
- (4) If the information relates to the business of an undertaking the consent of the person for the time being carrying on the business is required.
- (5) For the purposes of subsection (4) consent may be given—
  - (a) in the case of a company by a director, secretary or other officer of the company;
  - (b) in the case of a partnership by a partner;
  - (c) in the case of an unincorporated body or association by a person concerned in the management or control of the body or association.

#### **240 Community obligations**

This Part does not prohibit the disclosure of information held by a public authority to another person if the disclosure is required for the purpose of a Community obligation.

#### **241 Statutory functions**

- (1) A public authority which holds information to which section 237 applies may disclose that information for the purpose of facilitating the exercise by the authority of any function it has under or by virtue of this Act or any other enactment.
- (2) If information is disclosed under subsection (1) so that it is not made available to the public it must not be further disclosed by a person to whom it is so disclosed other than with the agreement of the public authority for the purpose mentioned in that subsection.
- (3) A public authority which holds information to which section 237 applies may disclose that information to any other person for the purpose of facilitating the exercise by that person of any function he has under or by virtue of—
  - (a) this Act;
  - (b) an enactment specified in Schedule 15;
  - (c) such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.

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- (4) Information disclosed under subsection (3) must not be used by the person to whom it is disclosed for any purpose other than a purpose relating to a function mentioned in that subsection.
- (5) In subsection (1) the reference to an enactment includes a reference to an enactment contained in—
  - (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation;
  - (c) subordinate legislation.
- (6) The Secretary of State may by order amend Schedule 15.
- (7) The power to make an order under subsection (6) includes power to add, vary or remove a reference to any provision of—
  - (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.
- (8) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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#### **[<sup>F1</sup>241A Civil proceedings**

- (1) A public authority which holds prescribed information to which section 237 applies may disclose that information to any person—
  - (a) for the purposes of, or in connection with, prescribed civil proceedings (including prospective proceedings) in the United Kingdom or elsewhere, or
  - (b) for the purposes of obtaining legal advice in relation to such proceedings, or
  - (c) otherwise for the purposes of establishing, enforcing or defending legal rights that are or may be the subject of such proceedings.
- (2) Subsection (1) does not apply to—
  - (a) information which comes to a public authority in connection with an investigation under Part 4, 5 or 6 of the 1973 Act or under section 11 of the Competition Act 1980;
  - (b) competition information within the meaning of section 351 of the Financial Services and Markets Act 2000;
  - (c) information which comes to a public authority in connection with an investigation under Part 3 or 4 or section 174 of this Act;
  - (d) information which comes to a public authority in connection with an investigation under the Competition Act 1998 (c. 41).
- (3) In subsection (1) “prescribed” means prescribed by order of the Secretary of State.
- (4) An order under this section—
  - (a) may prescribe information, or civil proceedings, for the purposes of this section by reference to such factors as appear to the Secretary of State to be appropriate;

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- (b) may prescribe for the purposes of this section all information, or civil proceedings, or all information or civil proceedings not falling within one or more specified exceptions;
  - (c) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than those specified in subsection (1).]

#### Textual Amendments

- F1** S. 241A inserted (6.4.2007) by Companies Act 2006 (c. 46), ss. 1281, 1300; S.I. 2006/3428, art. 4(1) (f) (subject to arts. 5, 6-8, Schs. 1, 5)

## 242 Criminal proceedings

- (1) A public authority which holds information to which section 237 applies may disclose that information to any person—
- (a) in connection with the investigation of any criminal offence in any part of the United Kingdom;
  - (b) for the purposes of any criminal proceedings there;
  - (c) for the purpose of any decision whether to start or bring to an end such an investigation or proceedings.
- (2) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than that for which it is disclosed.
- (3) A public authority must not make a disclosure under this section unless it is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

## 243 Overseas disclosures

- (1) A public authority which holds information to which section 237 applies (the discloser) may disclose that information to an overseas public authority for the purpose mentioned in subsection (2).
- (2) The purpose is facilitating the exercise by the overseas public authority of any function which it has relating to—
- (a) carrying out investigations in connection with the enforcement of any relevant legislation by means of civil proceedings;
  - (b) bringing civil proceedings for the enforcement of such legislation or the conduct of such proceedings;
  - (c) the investigation of crime;
  - (d) bringing criminal proceedings or the conduct of such proceedings;
  - (e) deciding whether to start or bring to an end such investigations or proceedings.
- (3) But subsection (1) does not apply to any of the following—
- (a) information which is held by a person who is designated by virtue of section 213(4) as a designated enforcer for the purposes of Part 8;

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- (b) information which comes to a public authority in connection with an investigation under Part 4, 5 or 6 of the 1973 Act or under section 11 of the Competition Act 1980 (c. 21);
  - (c) competition information within the meaning of section 351 of the Financial Services and Markets Act 2000 (c. 8);
  - (d) information which comes to a public authority in connection with an investigation under Part 3 or 4 or section 174 of this Act.
- (4) The Secretary of State may direct that a disclosure permitted by this section must not be made if he thinks that in connection with any matter in respect of which the disclosure could be made it is more appropriate—
- (a) if any investigation is to be carried out, that it is carried out by an authority in the United Kingdom or in another specified country or territory;
  - (b) if any proceedings are to be brought, that they are brought in a court in the United Kingdom or in another specified country or territory.
- (5) The Secretary of State must take such steps as he thinks are appropriate to bring a direction under subsection (4) to the attention of persons likely to be affected by it.
- (6) In deciding whether to disclose information under this section a public authority must have regard in particular to the following considerations—
- (a) whether the matter in respect of which the disclosure is sought is sufficiently serious to justify making the disclosure;
  - (b) whether the law of the country or territory to whose authority the disclosure would be made provides appropriate protection against self-incrimination in criminal proceedings;
  - (c) whether the law of that country or territory provides appropriate protection in relation to the storage and disclosure of personal data;
  - (d) whether there are arrangements in place for the provision of mutual assistance as between the United Kingdom and that country or territory in relation to the disclosure of information of the kind to which section 237 applies.
- (7) Protection is appropriate if it provides protection in relation to the matter in question which corresponds to that so provided in any part of the United Kingdom.
- (8) The Secretary of State may by order—
- (a) modify the list of considerations in subsection (6);
  - (b) add to those considerations;
  - (c) remove any of those considerations.
- (9) An order under subsection (8) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Information disclosed under this section—
- (a) may be disclosed subject to the condition that it must not be further disclosed without the agreement of the discloser, and
  - (b) must not otherwise be used by the overseas public authority to which it is disclosed for any purpose other than that for which it is first disclosed.
- (11) An overseas public authority is a person or body in any country or territory outside the United Kingdom which appears to the discloser to exercise functions of a public nature in relation to any of the matters mentioned in paragraphs (a) to (e) of subsection (2).

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(12) Relevant legislation is—

- (a) this Act, any enactment specified in Schedule 14 and such subordinate legislation as is specified by order for the purposes of section 238(1);
- (b) any enactment or subordinate legislation specified in an order under section 211(2);
- (c) any enactment or subordinate legislation specified in an order under section 212(3);
- (d) legislation in any country or territory outside the United Kingdom which appears to the discloser to make provision corresponding to this Act or to any such enactment or subordinate legislation.

**Modifications etc. (not altering text)**

- C4** S. 243(1) excluded (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 15, **Sch. 3 para. 3**
- C5** S. 243(6) applied (with modifications) (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 59(6), 65**; S.I. 2004/3322, **art. 2(3)**, Sch. 3

**244 Specified information: considerations relevant to disclosure**

- (1) A public authority must have regard to the following considerations before disclosing any specified information (within the meaning of section 238(1)).
- (2) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the authority thinks is contrary to the public interest.
- (3) The second consideration is the need to exclude from disclosure (so far as practicable) —
  - (a) commercial information whose disclosure the authority thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the authority thinks might significantly harm the individual's interests.
- (4) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3)(a) or (b) is necessary for the purpose for which the authority is permitted to make the disclosure.

*Offences*

**245 Offences**

- (1) A person commits an offence if he discloses information to which section 237 applies in contravention of section 237(2).
- (2) A person commits an offence if he discloses information in contravention of a direction given under section 243(4).
- (3) A person commits an offence if he uses information disclosed to him under this Part for a purpose which is not permitted under this Part.

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- (4) A person who commits an offence under this section is liable—
- (a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

### *General*

#### **246 Subordinate legislation**

In this Part “subordinate legislation” has the same meaning as in section 21(1) of the Interpretation Act 1978 (c. 30) and includes an instrument made under—

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation.

#### **247 Repeals**

The following enactments (which make provision as to the disclosure of certain information) shall cease to have effect—

- (a) section 28(5) and (5A) of the Trade Descriptions Act 1968 (c. 29);
- (b) sections 30(3) and 133 of the 1973 Act;
- (c) paragraph 12 of the Schedule to the Prices Act 1974 (c. 24);
- (d) section 174 of the Consumer Credit Act 1974 (c. 39);
- (e) section 10 of the Estate Agents Act 1979 (c. 38);
- (f) section 19(1) to (3), (4)(c), (d) and (f) and (5) and (6) of the Competition Act 1980 (c. 21);
- (g) section 38 of the Consumer Protection Act 1987 (c. 43);
- (h) paragraph 7 of the Schedule to the Property Misdescriptions Act 1991 (c. 29);
- (i) paragraph 5 of Schedule 2 to the Timeshare Act 1992 (c. 35);
- (j) sections 55 and 56 of and Schedule 11 to the Competition Act 1998 (c. 41);
- (k) section 351(1) to (3) and (7) of and Schedule 19 to the Financial Services and Markets Act 2000 (c. 8).



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