



# Environment Act 2021

## 2021 CHAPTER 30

### PART 1

#### ENVIRONMENTAL GOVERNANCE

### CHAPTER 2

#### THE OFFICE FOR ENVIRONMENTAL PROTECTION

#### *Information*

#### **42 Disclosures to the OEP**

- (1) No obligation of secrecy imposed by statute or otherwise prevents a person from—
  - (a) in accordance with section 27(1), providing the OEP with information in connection with an investigation under section 33, an information notice or a decision notice, or
  - (b) providing information to the OEP in accordance with section 35(3)(b).
- (2) But nothing in this Part—
  - (a) requires a person to provide the OEP with information that the person would be entitled to refuse to provide in civil proceedings on grounds of legal professional privilege (or, in Scotland, confidentiality of communications), or
  - (b) requires a person to provide the OEP with information that the person would be entitled, or required by any rule of law, to refuse to provide in civil proceedings on grounds of public interest immunity.
- (3) No obligation of secrecy imposed by statute or otherwise prevents a relevant ombudsman from providing information to the OEP—
  - (a) for purposes connected with the exercise of the OEP's functions under section 33;

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- (b) for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under section 33 and the ombudsman’s functions that relate to investigations by the ombudsman.
- (4) Nothing in this Part requires or authorises a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duties imposed and powers conferred by this Part).
- (5) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).

#### Commencement Information

- I1** S. 42 not in force at Royal Assent, see **s. 147(3)**
- I2** S. 42 in force at 24.1.2022 by **S.I. 2022/48, reg. 2(h)**

### 43 Confidentiality of proceedings

- (1) The OEP must not disclose—
  - (a) information obtained under section 27(1) or 35(3)(b), or
  - (b) correspondence between the OEP and a public authority that—
    - (i) relates to a particular information notice or decision notice, or
    - (ii) is, or contains, such a notice.
- (2) Subsection (1) does not apply to a disclosure—
  - (a) other than a disclosure of an information notice or a decision notice, made with the consent of the person who provided the information or correspondence;
  - (b) made for purposes connected with the exercise of the OEP’s functions under section 33 (investigations) [<sup>F1</sup>or paragraph 7 of Schedule 3 (functions of the OEP in Northern Ireland)];
  - (c) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under section 33 and a relevant ombudsman’s functions that relate to investigations by that ombudsman;
  - [<sup>F2</sup>(ca) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under paragraph 7 of Schedule 3 and the Northern Ireland Public Services Ombudsman’s functions that relate to investigations by the Ombudsman;]
  - (d) made for the purposes of any publication of a report (or part of it) on an investigation under section 33 [<sup>F3</sup>or paragraph 7 of Schedule 3];
  - (e) made for purposes connected with the exercise of the OEP’s functions under sections 35 to 41 [<sup>F4</sup>or paragraphs 9 to 15 of Schedule 3] (enforcement);
  - (f) made to a devolved environmental governance body for purposes connected with the exercise of a devolved environmental governance function;
  - (g) made for purposes connected with the protection of the natural environment in a country or territory outside the United Kingdom, to an authority of that country or territory, or an international organisation, that has functions in connection with the protection of the natural environment in that country or territory;

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- (h) of information, or correspondence, that relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Chapter [F<sup>5</sup> or Part 1 of Schedule 3].
- (3) A public authority must not disclose correspondence between the OEP and that, or any other, public authority that—
- (a) relates to a particular information notice [F<sup>6</sup>, decision notice, Northern Ireland information notice or Northern Ireland decision notice], or
- (b) is, or contains, such a notice.
- (4) Subsection (3) does not apply to a disclosure—
- (a) made—
- (i) in the case of a disclosure of correspondence between another public authority and the OEP other than correspondence that is, or contains, an information notice [F<sup>7</sup>, a decision notice, a Northern Ireland information notice or a Northern Ireland decision notice], with the consent of that authority and the OEP, or
- (ii) in any other case, with the specific or general consent of the OEP;
- (b) made for purposes connected with co-operating with any investigation under section 33 [F<sup>8</sup> or paragraph 7 of Schedule 3];
- (c) made for purposes connected with responding to any information notice or decision notice;
- (d) made for purposes connected with any proceedings in relation to an environmental review, judicial review [F<sup>9</sup> (which includes a review application)] or statutory review.
- (5) The OEP may not give a person consent to disclose an information notice [F<sup>10</sup>, a decision notice, a Northern Ireland information notice or a Northern Ireland decision notice] unless that notice relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Chapter [F<sup>11</sup> or Part 1 of Schedule 3].
- (6) If a public authority requests the consent of the OEP to disclose correspondence that relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Chapter [F<sup>12</sup> or Part 1 of Schedule 3], the OEP may not withhold that consent.
- (7) If information referred to in subsection (1) and held by the OEP, or referred to in subsection (3) and held by a public authority, is environmental information for the purposes of the Environmental Information Regulations 2004 (S.I. 2004/3391) or the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520), it is held by that person, for the purposes of the application of those regulations to that information, in connection with confidential proceedings.

#### Textual Amendments

- F1** Words in s. 43(2)(b) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), Sch. 3 para. 27(2)(a) (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F2** S. 43(2)(ca) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), Sch. 3 para. 27(2)(b) (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F3** Words in s. 43(2)(d) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), Sch. 3 para. 27(2)(c) (with s. 144); S.R. 2022/54, art. 2(1)(a)

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- F4** Words in s. 43(2)(e) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(2)(d)** (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F5** Words in s. 43(2)(h) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(2)(e)** (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F6** Words in s. 43(3)(a) substituted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(3)** (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F7** Words in s. 43(4)(a)(i) substituted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(4)(a)** (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F8** Words in s. 43(4)(b) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(4)(b)** (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F9** Words in s. 43(4)(d) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(4)(c)** (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F10** Words in s. 43(5) substituted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(5)(a)** (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F11** Words in s. 43(5) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(5)(b)** (with s. 144); S.R. 2022/54, art. 2(1)(a)
- F12** Words in s. 43(6) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 27(6)** (with s. 144); S.R. 2022/54, art. 2(1)(a)

#### **Commencement Information**

- I3** S. 43 not in force at Royal Assent, see **s. 147(3)**
- I4** S. 43 in force at 24.1.2022 by S.I. 2022/48, **reg. 2(h)**

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**Changes to legislation:**

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