

SCHEDULES

SCHEDULE 9

Section 100

DISCLOSURE OF INFORMATION

PART 1

PROHIBITION ON DISCLOSURE OF PROTECTED INFORMATION

Meaning of “protected information” and related terms

- 1 (1) In this Schedule “protected information” means information which has been—
 - (a) obtained by the ONR under section 97,
 - (b) provided to the ONR, an inspector or a health and safety inspector under section 98,
 - (c) obtained by an inspector as a result of the exercise of any relevant power,
 - (d) obtained by a health and safety inspector in the exercise of any power under section 20 of the 1974 Act (powers of persons appointed under section 19 of that Act),
 - (e) obtained by an ONR inquiry official as a result of the exercise of an ONR inquiry power,
 - (f) provided to a person pursuant to a requirement imposed by any of the relevant statutory provisions, or
 - (g) provided to the ONR or a health and safety inspector pursuant to a requirement imposed by any provision which is one of the relevant statutory provisions for the purposes of Part 1 of the 1974 Act.
- (2) Information is not protected information for the purposes of this Schedule if it has been—
 - (a) disclosed as mentioned in paragraph 16, or
 - (b) otherwise made available to the public—
 - (i) by virtue of a disclosure in accordance with Part 3 of this Schedule,
or
 - (ii) lawfully from other sources.
- (3) Information received by virtue of a disclosure under paragraph 21 (anonymised information) is not protected information.
- (4) Protected information includes, in particular, information with respect to a trade secret which an inspector, a health and safety inspector or an ONR inquiry official has obtained as a result of entering premises in exercise of a relevant power, a power conferred under section 20 of the 1974 Act or an ONR inquiry power.
- (5) In this Schedule—

Status: This is the original version (as it was originally enacted).

“ONR inquiry official” means a person on whom functions are conferred under section 85(5)(a);

“ONR inquiry power” means a power conferred by regulations under section 85(5)(a);

“the original holder” of protected information means the person who obtained the information, or to whom it was provided, as mentioned in subparagraph (1).

PART 2

OFFENCES RELATING TO DISCLOSURE AND USE OF PROTECTED INFORMATION

Prohibition on disclosing protected information

- 2 Protected information must not be disclosed—
- (a) by the original holder of the information, or
 - (b) by any other person holding it who has received it directly or indirectly from the original holder by virtue of a disclosure, or disclosures, in accordance with this Schedule,
- except in accordance with Part 3 of this Schedule.

Offence of disclosing protected information in contravention of paragraph 2

- 3 It is an offence for a person to disclose information in contravention of paragraph 2.

Offence of using protected information in contravention of a restriction in Part 3

- 4 It is an offence for a person to use protected information in contravention of a restriction under paragraph 10(3), 11(2), 12(2), 13(2), 14(2) or 15(2).

Defence to offences under paragraphs 3 and 4

- 5 It is a defence for a person charged with an offence under paragraph 3 or 4 to prove—
- (a) that the person did not know and had no reason to suspect that the information was protected information, or
 - (b) that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Penalty for offences under paragraphs 3 and 4

- 6 (1) A person who commits an offence under paragraph 3 or 4 is liable—
- (a) on summary conviction—
 - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
 - (ii) to a fine (in England and Wales) or a fine not exceeding the statutory maximum (in Scotland or Northern Ireland), or
 - (iii) to both;
 - (b) on conviction on indictment—
 - (i) to imprisonment for a term not exceeding 2 years,

- (ii) to a fine, or
- (iii) to both.

(2) In the application of sub-paragraph (1) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference in sub-paragraph (1)(a)(i) to 12 months is to be read as a reference to 6 months.

PART 3

PROTECTED INFORMATION: PERMITTED DISCLOSURES AND RESTRICTIONS ON USE

Disclosure with appropriate consent

- 7 (1) Paragraph 2 does not prohibit a disclosure of protected information if it is made with the appropriate consent.
- (2) For this purpose “the appropriate consent” means—
- (a) if the information was obtained as mentioned in paragraph 1(1) as a result of any premises being entered—
 - (i) by an inspector in exercise of a relevant power,
 - (ii) by a health and safety inspector in exercise of a power under section 20 of the 1974 Act, or
 - (iii) by an ONR inquiry official in exercise of an ONR inquiry power,the consent of a person having responsibilities in relation to the premises;
 - (b) in any other case, the consent of the person from whom the information was obtained, or who provided it, as mentioned in paragraph 1(1).

Disclosure by ONR, inspectors etc

- 8 Paragraph 2 does not prohibit a disclosure of protected information by—
- (a) the ONR,
 - (b) an inspector,
 - (c) a health and safety inspector, or
 - (d) an ONR inquiry official,
- for the purposes of any of that person's functions.

Disclosure to the ONR, inspectors etc

- 9 Paragraph 2 does not prohibit a disclosure of protected information to—
- (a) the ONR,
 - (b) an officer of the ONR,
 - (c) a person or body performing any functions of the ONR on its behalf by virtue of section 95,
 - (d) an officer of such a body,
 - (e) a person providing advice to the ONR,
 - (f) an inspector, or
 - (g) a health and safety inspector.

Status: This is the original version (as it was originally enacted).

Ministers, government departments and certain authorities

- 10 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure to—
 - (i) a relevant authority, or
 - (ii) an officer of a relevant authority, or
 - (b) a disclosure by a person within paragraph (a) which is necessary for any of the purposes of the relevant authority in question.
- (2) For this purpose, “relevant authority” means—
- (a) a Minister of the Crown,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers,
 - (d) a Northern Ireland Department,
 - (e) the Environment Agency,
 - (f) the Scottish Environment Protection Agency,
 - (g) the Natural Resources Body for Wales,
 - (h) the Office of Rail Regulation,
 - (i) the Civil Aviation Authority, or
 - (j) any other government department.
- (3) A person within sub-paragraph (1)(a) to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for a purpose other than any of the purposes of the relevant authority in question.

Health and safety etc

- 11 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure to a health and safety authority, or
 - (b) a disclosure by a health and safety authority which is—
 - (i) made by or with the consent of the Health and Safety Executive, and
 - (ii) necessary for any of the purposes of the Health and Safety Executive.
- (2) A health and safety authority to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for any purpose other than any of the purposes of the Health and Safety Executive.
- (3) For this purpose, “health and safety authority” means—
- (a) the Health and Safety Executive,
 - (b) an officer of the Health and Safety Executive,
 - (c) a person or body performing any functions of the Health and Safety Executive on its behalf by virtue of section 13(3) of the 1974 Act,
 - (d) an officer of such a body,
 - (e) an adviser appointed by that Executive under section 13(7) of that Act, and
 - (f) a person appointed by that Executive under section 19 of that Act as an inspector within the meaning given in that section.
- 12 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure to a person with enforcement responsibilities;
 - (b) a disclosure by such a person which is—

Status: This is the original version (as it was originally enacted).

- (i) made by or with the consent of the enforcing authority in question, and
 - (ii) necessary for the purposes of any function which the enforcing authority in question has in its capacity as an enforcing authority.
 - (2) A person with enforcement responsibilities to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information otherwise than for the purposes of any function which the enforcing authority in question has in its capacity as such.
 - (3) For this purpose, “person with enforcement responsibilities” means—
 - (a) an enforcing authority within the meaning of the 1974 Act, other than the ONR or the Health and Safety Executive;
 - (b) an officer of an authority within paragraph (a);
 - (c) a person appointed by such an authority under section 19 of that Act as an inspector within the meaning given in that section.
- 13 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
 - (a) a disclosure to a Northern Ireland health and safety authority;
 - (b) a disclosure by a Northern Ireland health and safety authority which is—
 - (i) made by or with the consent of the Health and Safety Executive for Northern Ireland, and
 - (ii) necessary for any of the purposes of the Health and Safety Executive for Northern Ireland.
 - (2) A Northern Ireland health and safety authority to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for any purpose other than any of the purposes of the Health and Safety Executive for Northern Ireland.
 - (3) For this purpose, Northern Ireland health and safety authority means—
 - (a) the Health and Safety Executive for Northern Ireland,
 - (b) an officer of the Health and Safety Executive for Northern Ireland,
 - (c) a person or body performing any functions of the Health and Safety Executive for Northern Ireland on its behalf by virtue of Article 15(1)(a) of the Health and Safety at Work (Northern Ireland) Order 1978 ([S.I. 1978/1039 \(N.I. 9\)](#)),
 - (d) an officer of such a body,
 - (e) an adviser appointed by that Executive under Article 15(1)(c) of that Order, and
 - (f) a person appointed by that Executive under Article 21 of that Order as an inspector within the meaning of that Article.

Local authorities and water authorities etc

- 14 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
 - (a) a disclosure by the original holder to an officer of a local authority or relevant water authority who is authorised by the authority to receive the information;
 - (b) a disclosure by an officer of a local authority or relevant water authority to whom the information is disclosed by virtue of paragraph (a) which is necessary for a relevant purpose.

Status: This is the original version (as it was originally enacted).

- (2) A person to whom information is disclosed by virtue of sub-paragraph (1)(a) must not use the information for a purpose other than a relevant purpose.
- (3) For the purposes of this paragraph—
- “local authority” includes the following—
- (a) a joint authority established by Part 4 of the Local Government Act 1985;
 - (b) an authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities);
 - (c) an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009;
 - (d) a combined authority established under section 103 of that Act;
 - (e) the London Fire and Emergency Planning Authority;
 - (f) the Broads Authority;
 - (g) a National Park authority;
- “relevant water authority” means—
- (a) a water undertaker,
 - (b) a sewerage undertaker,
 - (c) a water authority,
 - (d) a water development board, or
 - (e) Scottish Water;
- “relevant purpose”, in relation to an officer of a local authority or relevant water authority, means any purpose of the authority in connection with—
- (a) any of the relevant statutory provisions or any of the provisions which are relevant statutory provisions for the purposes of Part 1 of the 1974 Act, or
 - (b) any provision of, or made under, primary legislation which relates to public health, public safety or the protection of the environment.

Police

- 15 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure by the original holder to a constable authorised by a chief officer of police to receive it;
 - (b) a disclosure by a constable to whom it is disclosed by virtue of paragraph (a) which is necessary for any of the purposes of the police in connection with—
 - (i) the relevant statutory provisions, or
 - (ii) any provision of, or made under, primary legislation which relates to public health, public safety or national security.
- (2) A constable to whom information is disclosed by virtue of sub-paragraph (1) must not use the information for a purpose other than a purpose of the police in connection with—
- (a) any of the relevant statutory provisions or any of the provisions which are relevant statutory provisions for the purposes of Part 1 of the 1974 Act, or
 - (b) any provision of, or made under, primary legislation which relates to public health, public safety or national security.

Disclosure required under legislation

- 16 Paragraph 2 does not prohibit a disclosure of protected information which is made in accordance with an obligation under—
- (a) the Freedom of Information Act 2000,
 - (b) the Freedom of Information (Scotland) Act 2002, or
 - (c) environmental information regulations within the meaning given in section 39(1A) of the Freedom of Information Act 2000.

Legal proceedings, inquiries and investigations

- 17 Paragraph 2 does not prohibit a disclosure of protected information for the purposes of—
- (a) any legal proceedings,
 - (b) an ONR inquiry,
 - (c) an inquiry under section 14(2A) of the 1974 Act which is relevant to the ONR's purposes,
 - (d) an investigation held by virtue of section 84,
 - (e) any report of such proceedings, ONR inquiry or inquiry under section 14(2A) of the 1974 Act or any special report under section 84.
- 18 Paragraph 2 does not prohibit a disclosure of protected information which is made—
- (a) by an inspector, a health and safety inspector or an ONR inquiry official,
 - (b) to a person who appears to the person making the disclosure to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, and
 - (c) in the form of a written statement of relevant facts observed by the person making the disclosure in the course of exercising a relevant power, a power under section 20 of the 1974 Act or an ONR inquiry power.
- 19 (1) Paragraph 2 does not prohibit a disclosure of protected information which is made—
- (a) by the ONR, an inspector, a health and safety inspector or an ONR inquiry official, and
 - (b) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (criminal proceedings and investigations).
- (2) Section 18 of that Act (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by sub-paragraph (1) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

Disclosure for safeguards purposes

- 20 Paragraph 2 does not prohibit a disclosure of protected information which is made for the purposes of any of the safeguards obligations.

Anonymised information

- 21 Paragraph 2 does not prohibit a disclosure of protected information which is made in a form calculated to prevent the information from being identified as relating to a particular person or case.

Status: This is the original version (as it was originally enacted).

PART 4

GENERAL

Interaction with other legislation

- 22 The prohibition in paragraph 2 is to be disregarded for the purposes of—
- (a) section 44 of the Freedom of Information Act 2000, and
 - (b) section 26 of the Freedom of Information (Scotland) Act 2002,
- (which provide for exemptions from disclosure requirements under those Acts for information subject to statutory prohibitions on disclosure).
- 23 Nothing in this Part of this Act is to be taken to permit or require a disclosure of information which is prohibited by or under any provision of primary legislation (including, in particular, section 79 or 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition on disclosure of information relating to nuclear security)).