

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Xxiii: Public Record, Disclosure of Information and Co-Operation

615. This Part requires the Authority to compile and maintain a public record of authorised persons. It also imposes safeguards for the protection of confidential information.
616. The Authority, together with the competent authority for listing and the Secretary of State, will necessarily require access to confidential information. The Act provides them with powers to obtain this. It also contains safeguards to ensure that this information remains confidential, subject to allowing information to pass between them and other regulatory authorities where this is necessary for the performance of specific public functions (for example, to assist in the investigation and prosecution of crime). The passage of information between authorities is subject to conditions relating to the purpose of disclosure and, in some cases, the identity of the person to whom the information is disclosed. These conditions are often referred to as “gateways”. This area is already subject to detailed constraints under EC law. The Act, together with the regulations to be made under the powers conferred by these provisions, will create a confidentiality regime very similar to those under the predecessor legislation. The creation of a single regulator will however allow some rationalisation of the existing structure.

Section 347: The record of authorised persons etc.

617. This section places an obligation on the Authority to maintain a record of certain details about authorised persons and other categories of persons set out in subsection (1). The record must include details of the services provided by authorised persons, the addresses of authorised persons and other categories of specified persons, and any other information the Authority thinks is appropriate. The record must be available for inspection by members of the public, at a place and at times determined by the Authority. The Authority must allow members of the public to obtain a copy of the record, or a part of it. The Authority may charge for providing such copies.

Section 348: Restrictions on disclosure of confidential information by Authority etc.

618. *Subsections (2), (3) and (4)* define what is, and what is not, to be regarded as confidential information. *Subsection (1)* makes clear that this information is not to be disclosed by a “primary recipient”, or a person who has received the information from a primary recipient, without the consent of the person from whom it was obtained and, if different, the person to whom it relates. *Subsection (5)* lists primary recipients.

Section 349: Exceptions from section 348

619. This section makes clear that, notwithstanding the restrictions in section 348, confidential information may be disclosed if this is in accordance with regulations made by the Treasury. It also gives the Treasury the power to make such regulations where disclosure would facilitate the carrying out of a public function. This power will be used to create various “gateways” between the primary recipients and other organisations for various specified purposes.

Section 350: Disclosure of information by the Inland Revenue

620. This section creates a mechanism, or gateway, through which information held by the Inland Revenue, which would otherwise be subject to a legal obligation of confidentiality, may, in certain circumstances be passed to the Authority or to the Secretary of State. *Subsection (2)* makes clear that this disclosure may be made only by, or under the authority of, the Commissioners of Inland Revenue.
621. *Subsection (1)* provides that Revenue information may be disclosed under this section only for the purpose of assisting an investigator appointed by the Authority or the Secretary of State under section 168 in his task, or to assist the Authority or the Secretary of State in taking a decision whether or not to appoint such an investigator. Once information has been disclosed, *subsection (4)* provides that it may only be used for the purposes of taking a decision whether or not to appoint an investigator, or to further an investigation, if an investigator has been appointed, or in any criminal proceedings or regulatory action, including proceedings before the Financial Services and Markets Tribunal, that may arise out of an investigation.
622. *Subsection (5)* provides that onward disclosure of information received under this section is prohibited, except in the case of proceedings before a court or the Tribunal arising out of an investigation, or if this is done with a view to the institution of such proceedings, or if it takes place with the consent or the authority of the Commissioners of Inland Revenue. *Subsection (6)* makes clear, however, that this does not prevent disclosure of information to a person to whom it could have been disclosed under *subsection (1)*.

Section 350: Competition information

623. This section makes provision, together with Schedule 19, for the protection of information obtained by the DGFT and the Commission under their powers of competition scrutiny under the Act. It applies to information obtained under all of the various competition scrutiny provisions in the Act, that is to say the provisions covering the competent authority for listing in Part VI, the Authority in Part X, and the recognised investment exchanges and clearing houses in Part XVIII.
624. *Subsection (1)* provides that it is an offence improperly to disclose “competition information”. “Competition information” is defined in *subsection (5)* as information about the affairs of a particular individual or body, which is not in the public domain, and which was obtained under powers in a competition provision of the Act.
625. *Subsection (2)* sets out the circumstances in which disclosure will not be regarded as improper, and which is therefore permissible. These circumstances basically fall into two classes. First, where the person to whom the information relates, and if different the person from whom it is obtained, have given their consent to disclosure. Second, when this would serve one of a number of defined public purposes. These purposes include the fulfilment of the UK’s obligations under EC law, the investigation and prosecution of crime, civil proceedings under the competition provisions of the Act, and finally the disclosure of information to a number of bodies having various statutory functions, to assist them in carrying out these functions. The bodies and the statutes concerned are listed in Schedule 19.

Section 352: Offences

626. This section makes clear that unauthorised disclosure or use of confidential information is a criminal offence, subject to the defences provided for in *subsection (6)*, and sets out the penalties for these offences. These provisions reproduce the existing offences in this area.

Section 353: Removal of other restrictions on disclosure

627. This section enables the Treasury to make regulations permitting disclosure of information held by third parties to the Authority to assist it in carrying out its functions. It also enables regulations to be made to allow the disclosure of information by various other entities carrying out functions under this Act, for example the compensation scheme manager, in order to assist with these functions. The purpose of this section is to enable the Treasury to create gateways, for example overriding confidentiality obligations to which the prescribed persons are subject, if it is appropriate that such persons should be able to disclose information either to the Authority or to third parties for the purposes of functions connected to the Act.

Section 354: Authority's duty to cooperate with others

628. This section places a duty on the Authority to take such steps as it considers appropriate to co-operate and share information, which it is not otherwise prevented from disclosing by virtue of the provisions of this Part, with other bodies or persons, whether in the United Kingdom or elsewhere, who have functions broadly equating to those of the Authority, or who have a role in relation to the prevention and detection of financial crime. It carries forward the provision in paragraph 5 of Schedule 7 of the FS Act 1986, which places a similar duty on the Authority.