
STATUTORY INSTRUMENTS

2007 No. 2193

CONSUMER PROTECTION

The Enterprise Act 2002 (Disclosure of Information for Civil Proceedings etc.) Order 2007

<i>Made</i>	- - - -	<i>23rd July 2007</i>
<i>Laid before Parliament</i>		<i>26th July 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Secretary of State makes the following Order in exercise of the powers conferred upon him by section 241A of the Enterprise Act 2002⁽¹⁾.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Enterprise Act 2002 (Disclosure of Information for Civil Proceedings etc.) Order 2007 and shall come into force on 1st October 2007.

(2) In this Order a reference to a section, Part or Schedule is a reference to a section, Part or Schedule of the Enterprise Act 2002.

Prescribed information

2. All specified information to which section 237 applies (other than the categories of information set out in section 241A(2)) is prescribed for the purposes of section 241A(1) with the exception of—

- (a) information which comes to the OFT in connection with the exercise of its functions under—
 - (i) subsection (1) of section 5 (acquisition of information etc.) with a view to exercising its functions under—
 - (aa) section 6 (provision of information etc. to the public),
 - (bb) section 7 (provision of information and advice to Ministers etc.), or
 - (cc) section 8 (promoting good consumer practice);
 - (ii) section 11 (super-complaints to OFT);
 - (iii) section 92 (duty of OFT to monitor orders and undertakings relating to mergers);

(1) 2002 c.40. Section 241A was inserted by section 1281 of the Companies Act 2006 (c.46).

- (iv) section 162 (duty of OFT to monitor orders and undertakings relating to market investigations);
- (v) Part 6 (cartel offence);
- (vi) paragraphs 14 to 18 (monopoly references, enforcement undertakings and orders) of Schedule 24;
- (b) information which comes to a regulator in connection with the exercise of its functions under section 11 (super-complaints to OFT) as applied by section 205 (super-complaints to regulators other than OFT); and
- (c) information which comes to Her Majesty's Revenue and Customs in connection with the exercise of their functions under the Customs & Excise Management Act 1979(2) and the Value Added Tax Act 1994(3).

Prescribed proceedings

3.—(1) The following civil proceedings are prescribed for the purposes of section 241A(1)—

- (a) proceedings relating to or arising out of a legal right or obligation of a consumer;
- (b) proceedings relating to or arising out of the infringement of an intellectual property right;
- (c) proceedings relating to or arising out of passing off or the misuse of a trade secret.

(2) In paragraph (1)(a) a “consumer” is an individual who—

- (a) is acting outside his trade, business or profession; or
- (b) is acting with a view to carrying on a business but not in the course of a business carried on by him.

(3) In paragraph (1)(b) an “intellectual property right” includes a patent, copyright, and analogous or related right, database right, registered or unregistered design right, registered trade mark, topography right, supplementary protection certificate, plant variety right, protected designation of origin or a protected geographical indication.

Gareth Thomas
Parliamentary Under Secretary of State for Trade
and Consumer Affairs
Department of Business, Enterprise &
Regulatory Reform

23rd July 2007

(2) 1979 c.2.
(3) 1994 c.23.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 9 of the Enterprise Act 2002 (“the Act”) restricts the disclosure of specified information which relates to the affairs of an individual or any business of an undertaking. Specified information, defined by section 238 of the Act, comprises information which comes to a public authority in connection with the exercise of any function it has under or by virtue of Parts 1, 3, 4, 6, 7 or 8 of the Act, an enactment specified in Schedule 14 or subordinate legislation specified by order of the Secretary of State.

Section 241A of the Act (which was inserted by section 1281 of the Companies Act 2006) provides that specified information, which is prescribed by order, may be disclosed for the purposes of, or in connection with, civil proceedings, which are prescribed by order. Section 241A(2) excludes from the information which may be specified by order certain categories of information relating to competition matters.

Article 2 prescribes all specified information to which section 237 applies (other than that excluded by section 241A(2)) except for that set out in article 2(a) to (c) (certain information obtained by the OFT, regulators and Her Majesty’s Revenue and Customs).

Article 3 prescribes the kinds of proceedings for which the information prescribed by this Order may be disclosed. These are proceedings in respect of the rights and obligations of consumers and those relating to or arising out of the infringement or misuse of intellectual property rights. Section 241A permits prescribed information to be disclosed for obtaining legal advice in relation to such prescribed proceedings and otherwise for the purposes of establishing, enforcing or defending legal rights that are or may be the subject of such prescribed proceedings.

A regulatory impact assessment of the effect that these Regulations will have on the costs to business is available from the Consumer and Competition Policy Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. It is also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website www.opsi.gov.uk. Copies of the regulatory impact assessment have also been placed in the libraries of both Houses of Parliament.