
DRAFT STATUTORY INSTRUMENTS

2006 No.

**The Water and Sewerage Services
(Northern Ireland) Order 2006**

**PART IX
INFORMATION**

Restriction on disclosure of information

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265.—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained by virtue of any of the provisions of this Order or the [Water and Sewerage Services \(Northern Ireland\) Order 1973 \(NI 2\)](#); and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) No person shall disclose any information provided to him under Article 262 or under Chapter III of Part VI except—

- (a) with the consent of the person by whom the information was furnished;
 - (b) in connection with the execution of that Chapter;
 - (c) for the purposes of any proceedings arising under that Chapter (including any appeal, application to the Department, DOE or the Authority or an arbitration);
 - (d) for the purposes of any criminal proceedings (whether or not so arising); or
 - (e) for the purposes of any report of any proceedings falling within sub-paragraph (c) or (d).
- (3) Paragraph (1) does not apply to any disclosure of information which is made—
- (a) for the purpose of facilitating the performance by the Department, DOE, the Authority, the Council, the Competition Commission or a district council of any functions under this Order, the Water Order, Part III of the [Waste and Contaminated Land \(Northern Ireland\) Order 1997 \(NI 19\)](#) or regulations under Article 4 of the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#);
 - (b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Order or the Water Order;
 - (c) in pursuance of any duty imposed by Article 52;
 - (d) for the purpose of facilitating the performance by a person or body mentioned in paragraph (4) of any functions under a statutory provision specified in paragraph (5);

- (e) for the purpose of facilitating the exercise by the Secretary of State or the Treasury of any powers conferred by the Financial Services and Markets Act 2000 (c. 8) or by any statutory provision relating to companies, insurance companies or insolvency;
- (f) for the purpose of facilitating the performance by any inspector appointed under the statutory provisions relating to companies of his functions;
- (g) for the purpose of facilitating the performance by the Department of Enterprise, Trade and Investment or DFP of any functions conferred on it by any statutory provision relating to companies or insolvency;
- (h) for the purpose of facilitating the performance by the official receiver for Northern Ireland of his functions under the statutory provisions relating to insolvency or for the purpose of facilitating the performance by a recognised professional body for the purposes of Article 350 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) of its functions as such a body;
- (i) for the purpose of facilitating the performance by the Health and Safety Executive for Northern Ireland of any of its functions;
- (j) for the purpose of facilitating the performance by the Comptroller and Auditor General for Northern Ireland of any of his functions;
- (k) for the purpose of facilitating the performance by the Appeals Commission of any of its functions;
- (l) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (m) for the purposes of any civil proceedings brought under or by virtue of this Order or the Water Order or any statutory provision specified in paragraph (5), or of any arbitration under this Order or the Water Order; or
- (n) in pursuance of a Community obligation,

and sections 17 and 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) apply to this paragraph as if it were listed in Schedule 4 to that Act.

(4) The persons and bodies specified for the purposes of paragraph (3)(d) are—

- (a) a Minister of the Crown;
- (b) a Northern Ireland department;
- (c) the Competition Commission;
- (d) the Office of Fair Trading;
- (e) the Office of Communications;
- (f) the Authority;
- (g) the Civil Aviation Authority;
- (h) the Financial Services Authority.

(5) The statutory provisions specified for the purposes of paragraphs (3)(d) and (m) are—

- (a) the Trade Descriptions Act 1968 (c. 29);
- (b) the Fair Trading Act 1973 (c. 41);
- (c) the Consumer Credit Act 1974 (c. 39);
- (d) the Estate Agents Act 1979 (c. 38);
- (e) the Competition Act 1980 (c. 2);
- (f) the Telecommunications Act 1984 (c. 12);
- (g) the [Consumer Protection \(Northern Ireland\) Order 1987 \(NI 20\)](#);

- (h) the Control of Misleading Advertisements Regulations 1988 (SI 1988/915);
 - (i) the Electricity (Northern Ireland) Order 1992 (NI 1);
 - (j) Part IV of the Airports (Northern Ireland) Order 1994 (NI 1);
 - (k) the Gas (Northern Ireland) Order 1996 (NI 2);
 - (l) the Competition Act 1998 (c. 41);
 - (m) Part I of the Transport Act 2000 (c 38);
 - (n) the Financial Services and Markets Act 2000 (c. 8);
 - (o) the Enterprise Act;
 - (p) the Communications Act 2003 (c. 21);
 - (q) the Energy (Northern Ireland) Order 2003 (NI 6).
- (6) The Department may by order modify paragraph (3), (4) or (5).
- (7) Nothing in paragraph (1) shall be construed—
- (a) as limiting the matters which may be published under Article 67, 151 or 259 or may be included in, or made public as part of, a report of the Department, DOE, the Authority, the Council, a district council or the Competition Commission under any provision of this Order, the Water Order, Part III of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19) or regulations under Article 4 of the Environment (Northern Ireland) Order 2002 (NI 7), or
 - (b) as applying to any information which has been so published or has been made public as part of such a report or to any information exclusively of a statistical nature.
- (8) Subject to paragraph (9), nothing in paragraph (1) shall preclude the disclosure of information—
- (a) if the disclosure is of information relating to a matter connected with the carrying out of the functions of a relevant undertaker and is made by one Minister of the Crown or government department to another; or
 - (b) if the disclosure is for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this Article by an order made by the Department to discharge any functions which are specified in the order.
- (9) An order under paragraph (8) shall be subject to negative resolution; and where such an order designates an authority for the purposes of sub-paragraph (b) of that paragraph, the order may—
- (a) impose conditions subject to which the disclosure of information is permitted by virtue of that paragraph; and
 - (b) otherwise restrict the circumstances in which disclosure is so permitted.
- (10) Any person who discloses any information in contravention of the preceding provisions of this Article shall be guilty of an offence.
- (11) A person who is guilty of an offence under this Article by virtue of paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (12) A person who is guilty of an offence under this Article by virtue of paragraph (2) shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both.

(13) Information obtained by the Authority in the exercise of functions which are exercisable concurrently with the OFT under Part I of the Competition Act 1998 (c. 41) is subject to Part 9 of the Enterprise Act (information) and not to the preceding provisions of this Article.

Unauthorised disclosure of information relating to particular persons

266.—(1) A person to whom this Article applies commits an offence if he discloses without lawful authority any information—

- (a) which he acquired in the course of his employment;
- (b) which is, or is derived from, information supplied under—
 - (i) Article 264; or
 - (ii) Article 3 of the Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006; and
- (c) which relates to a particular person.

(2) This Article applies to any person who is employed—

- (a) by a relevant undertaker; or
- (b) in the provision of services to a relevant undertaker for the purposes of any arrangements mentioned in Article 264(2);

and “employment” in relation to any such person shall be construed accordingly.

(3) It is not an offence under this Article to disclose information which has previously been disclosed to the public with lawful authority.

(4) It is a defence for a person charged with an offence under this Article to show that at the time of the alleged offence—

- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or
- (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(5) A person who is guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) For the purposes of this Article a disclosure of information is to be regarded as made with lawful authority if, and only if, it is made—

- (a) with the authority of a relevant undertaker for the purposes of the exercise of its functions;
- (b) in accordance with any statutory provision or order of a court;
- (c) for the purposes of any criminal proceedings; or
- (d) with the consent of the person to whom the information relates.