

REGULATORY REFORM ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 7: Representations made in confidence or containing damaging information

97. This section sets out what should be done when someone responding to the consultation exercise on a proposed order requests that their response should not be disclosed. The reason for allowing representations to be made in confidence is that, for example, where there is a proposal to relax a requirement, someone might want to show how the existing control has enabled a major fraud to be detected. Or there may be commercially confidential information either as to the benefits or adverse effects to be expected as a result of a proposed order.
98. *Subsection (2)* makes clear that the fact that the respondent has made representations should always be disclosed. That is, no respondent would be able to exclude his name from the list of respondents that is presented to Parliament under section 6(2)(k). However, the Minister should not disclose the content of that representation without the express consent of the respondent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve the anonymity of the respondent and any third party involved.
99. In debate, Ministers stressed the primacy of propriety and openness (Lord McIntosh of Haringey, House of Lords Hansard, 13 Feb 2001, col 200-201):
- “The purpose of requiring Ministers to disclose the names of respondents to the committee is to prevent them from being subjected to undue pressure to make particular changes to legislation. I repeat that a weak or corrupt Minister might want to keep secret representations that were to the financial or political advantage of the Government and might influence his judgement. We would certainly wish to head off concerns about the possibility of secret representations from those with financial interests. Although it is a matter of protecting Ministers, it is also a matter of protecting the public from Ministers who might misrepresent the consultation process for their own ends
100. *Subsection (3)* governs the requirements for disclosure where a respondent has given information about a third party which the Minister believes may be damaging to the interests of that third party. In such cases the respondent may not have requested confidentiality. The Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure.
101. However, there may be cases where one or both of the Scrutiny Committees wishes to have access to the representations as originally submitted. *Subsection (4)* provides for this. This provision acts as a safeguard against improper influence being brought to bear on Ministers in their formulation of regulatory reform orders. The fact that responses may be released to the Committees in this way will be made clear in the consultation document accompanying any proposed order.