

*These notes refer to the Enterprise Act 2002 (c.40)
which received Royal Assent on 7 November 2002*

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Information

Restrictions on disclosure

Section 237: General restriction

590. This section sets out the general restriction on the disclosure of information by a public authority. The term ‘public authority’ is defined in section 238 by reference to the Human Rights Act 1998.
591. *Subsection (1)* states that the general restriction applies only to information classed as ‘specified information’ – as defined in section 238. Therefore, these provisions impose no restrictions on the disclosure of information that falls outside the definitions in section 238. The restriction applies in respect of specified information that relates to either the affairs of an individual or to those of any business of an undertaking.
592. *Subsection (2)* provides that the restriction will apply throughout the lifetime of any individual who is the subject of the information, or while any undertaking to which the information relates continues in existence. However, it also acts as a pointer to the exceptions to the general restriction that are set out in sections 239-243 inclusive.
593. *Subsection (3)* sets out a further exception to the general restriction: disclosure is permitted where the information concerned has already been placed in the public domain by any lawful means, including – but not restricted to – any of the exceptions to the general restriction set out in sections 239-243 inclusive.
594. *Subsection (4)* states that all of the provisions on disclosure of information are subject to the provisions of the Data Protection Act 1998.
595. *Subsection (5)* states that the Competition Appeal Tribunal is not subject to the disclosure provisions of this Part.
596. *Subsection (6)* confirms that the restrictions on disclosure, with the exception of section 244, are not intended to affect any power or duty to disclose information which exists outside Part 9 of the Act (i.e. whether arising under this Act or elsewhere).

Section 238: Information

597. This section defines the information to which the disclosure provisions will apply.
598. *Subsection (1)* defines ‘specified information’ as information that has been obtained by a ‘public authority’ (as defined in subsection (3)) in connection with the exercise by it of any function that it has under the following Parts of this Act - Part 1 (‘The Office of Fair Trading’), Part 3 (‘Mergers’), Part 4 (‘Market Investigations’), Part 6 (‘Cartel Offence’), Part 7 (‘Miscellaneous Competition Provisions’) and Part 8 (‘Enforcement of Certain Consumer Legislation’), under any of the enactments listed in Schedule 14

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of this Act; or under any secondary legislation specified by the Secretary of State in an order. *Subsection (4)* provides that the term “enactment” will be taken to refer to both primary and secondary legislation, including Scottish and Northern Ireland legislation.

599. *Subsection (2)* has the effect of applying the new disclosure provisions to all “specified information” held by public authorities after the passing of this Act, as well as to information already held by a public authority at the time the Act was passed.
600. *Subsection (3)* requires the term ‘public authority’ to be construed in accordance with the terms of section 6 of the Human Rights Act 1998 – that is to include courts and tribunals (including the House of Lords in its judicial capacity), as well as any person exercising functions of a public nature, but excluding Parliament. (An ‘overseas public authority’ is separately defined in section 243 of this Act).
601. *Subsection (5) and (6)* empower the Secretary of State to amend the lists of legislation in Schedule 14, under which statutory functions arise. This will allow the lists to be updated to reflect subsequent changes to the legislative base. *Subsection (7)* provides that statutory instruments made under subsection (4) will be subject to the negative Parliamentary procedure.