



Trade (Disclosure of Information) Act 2020

2020 CHAPTER 28

An Act to make provision about the disclosure of information relating to trade.
[17th December 2020]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Trade functions: disclosure of information by HMRC

- (1) Her Majesty's Revenue and Customs (or anyone acting on their behalf) may disclose information for the purpose of—
 - (a) facilitating the exercise by a Minister of the Crown of the Minister's functions relating to trade,
 - (b) facilitating the exercise by a devolved authority of the authority's functions relating to trade, or
 - (c) facilitating the exercise by an international organisation or authority, or by any other body, of its public functions relating to trade.
- (2) Those functions include, among other things, functions relating to—
 - (a) the analysis of the flow of traffic, goods and services into and out of the United Kingdom;
 - (b) the analysis of the impact, or likely impact, of measures or practices relating to imports, exports, border security and transport on such flow;
 - (c) the design, implementation and operation of such measures or practices.
- (3) A person who receives information as a result of this section may not—
 - (a) use the information for a purpose other than one mentioned in subsection (1), or
 - (b) further disclose the information,

except with the consent of the Commissioners for Her Majesty's Revenue and Customs (which may be general or specific).

- (4) If—
- (a) a person discloses information in contravention of subsection (3)(b), and
 - (b) the information relates to a person whose identity is specified in, or can be deduced from, the disclosure,
- section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act.
- (5) Nothing in this section limits the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.
- (6) Nothing in this section authorises the making of a disclosure which would—
- (a) contravene the data protection legislation, or
 - (b) be prohibited by the investigatory powers legislation.
- In determining whether a disclosure would do either of those things, the powers conferred by this section are to be taken into account.
- (7) In this section “devolved authority” means—
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers, or
 - (c) a Northern Ireland department.

2 Trade functions: disclosure of information by other authorities

- (1) A public authority specified in subsection (3) may disclose information for the purpose of facilitating the exercise by a Minister of the Crown of the Minister's functions relating to trade.
- (2) Those functions include, among other things, functions relating to—
- (a) the analysis of the flow of traffic, goods and services into and out of the United Kingdom;
 - (b) the analysis of the impact, or likely impact, of measures or practices relating to imports, exports, border security and transport on such flow;
 - (c) the design, implementation and operation of such measures or practices.
- (3) The specified public authorities are—
- (a) the Secretary of State;
 - (b) the Minister for the Cabinet Office;
 - (c) a strategic highways company appointed under section 1 of the Infrastructure Act 2015;
 - (d) a port health authority constituted under section 2 of the Public Health (Control of Disease) Act 1984.
- (4) A person who receives information as a result of this section may only use the information for the purpose of facilitating the exercise by a public authority of the authority's functions relating to trade (which include, among other things, functions of a kind referred to in subsection (2)).

- (5) A person who receives information as a result of this section may further disclose the information, but only with the consent of the public authority that disclosed the information under subsection (1) (which may be general or specific).
- (6) Nothing in this section limits the circumstances in which information may be disclosed under any other enactment or rule of law.
- (7) A disclosure under this section does not breach—
 - (a) any obligation of confidence owed by the person disclosing the information, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (8) But nothing in this section authorises the making of a disclosure which would—
 - (a) contravene the data protection legislation, or
 - (b) be prohibited by the investigatory powers legislation.

In determining whether a disclosure would do either of those things, the powers conferred by this section are to be taken into account.

- (9) A Minister of the Crown may by regulations made by statutory instrument amend this section for the purpose of specifying a public authority in, or removing a public authority from, subsection (3).
- (10) A statutory instrument containing regulations under subsection (9) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (11) In this section “public authority” means an authority exercising functions of a public nature.

3 Offence relating to disclosure under section 2

- (1) If a person discloses information in contravention of section 2 which relates to a person whose identity—
 - (a) is specified in the disclosure, or
 - (b) can be deduced from it,the person who disclosed the information commits an offence.
- (2) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed—
 - (a) that the disclosure was lawful, or
 - (b) that the information had already lawfully been made available to the public.
- (3) A prosecution for an offence under this section—
 - (a) may be brought in England and Wales only with the consent of the Director of Public Prosecutions;
 - (b) may be brought in Northern Ireland only with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction—

- (i) in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.
- (5) In relation to an offence committed before the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, the reference in subsection (4)(b)(i) to 12 months is to be read as a reference to 6 months.

4 Expiry of sections 1 to 3

- (1) Subsection (2) applies if, in the Session in which this Act is passed, an Act resulting from the Trade Bill is passed which contains provisions that, in the opinion of the Secretary of State, have the same effect as, or similar effect to, sections 1 to 3 (the “corresponding provisions”).
- (2) The Secretary of State must by regulations made by statutory instrument provide for sections 1 to 3 to expire at the time that the corresponding provisions come into force to any extent.
- (3) Regulations under this section may include transitional, transitory or saving provision.

5 Interpretation

In this Act—

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“enactment” has the same meaning as in the European Union (Withdrawal Agreement) Act 2020 (see section 39 of that Act);

“the investigatory powers legislation” means Parts 1 to 7 and Chapter 1 of Part 9 of the Investigatory Powers Act 2016;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

6 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act comes into force on the day on which it is passed.
- (3) This Act may be cited as the Trade (Disclosure of Information) Act 2020.