SCHEDULES

SCHEDULE 4

RESTRICTIONS ON DISCLOSURE OF INFORMATION

Preliminary

1.—(1) Paragraphs 2 to 5,7 and 8 apply where—

(a) a person ("contractor A") is authorised to exercise any function ("the relevant function") of a Department, Minister, office holder or district council ("authority A"); and

(b) the disclosure of relevant information, that is, information obtained, whether before or after the commencement of this Order, in or in connection with the exercise of the relevant function or a related function, is restricted by any enactment or by any obligation of confidentiality.

(2) Paragraphs 6 to 8 apply where—

(a) a person ("contractor A") is authorised to exercise any function ("the relevant function") of a Department, Minister, office-holder or district council ("authority A"); and

(b) the disclosure of relevant information, that is, information obtained, whether before or after the commencement of this Order, in or in connection with the exercise of any function of another Department, Minister, office-holder or district council ("authority E"), is restricted by any enactment or by any obligation of confidentiality.

Disclosure between contracting parties, etc.

2. The enactment or obligation does not prevent or penalise the disclosure of relevant information—

(a) between contractor A or an employee of his and authority A or an authorised officer of that authority;

(b) between contractor A and an employee of his or between one such employee and another; or

(c) where the relevant function has been delegated to authority A by another Department, Minister, office-holder or district council ("authority B"), between contractor A or an employee of his and authority B or an authorised officer of that authority,

if the disclosure is necessary or expedient in or in connection with, or for the purpose of facilitating, the exercise of the relevant function or a related function or the performance of ancillary services.

Disclosures by contracting parties to contractor B

3.—(1) This ,paragraph applies where another person ("contractor B") is authorised to exercise the relevant function or a related function.

(2) The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, or authority A or an authorised officer of that authority, to contractor B or an employee of his, if—

(a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function or a related function; and

(b) where the disclosure is by contractor A or an employee of his, the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient.

Disclosures by contracting parties to contractor C

4.—(1) This paragraph applies where another person ("contractor C") is authorised to exercise a function of another Department, Minister, office-holder or district council ("authority C").

(2) The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, or authority A or an authorised officer of that authority; to contractor C or an employee of his, if—

(a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority C;

(b) where the disclosure is by contractor A or an employee of his, the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient; and

(c) the information could be lawfully disclosed, for that purpose, by authority A to authority C.

Disclosures by contractor A to authority D

5. The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his to another Department, Minister, office-holder or district council ("authority D") or an authorised officer of that authority if—

(a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority D;

(b) the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient; and

(c) the information could be lawfully disclosed, for that purpose, by authority A to authority D.

Disclosures to contractor A by authority E

6. The enactment or obligation does not prevent or penalise the disclosure of relevant information by authority E or an authorised officer of that authority to contractor A or an employee of his, if—

(a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority E; and

(b) the information could be lawfully disclosed, for that purpose, by authority E to authority A.

Disclosures for audit purposes

7.—(1) Where authority A is a Department, Minister or office-holder, the enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, if—

(a) the disclosure is to the Comptroller, or a person exercising an audit function of his, and the information could be lawfully disclosed to the Comptroller or that person by authority A; or

(b) the disclosure is to an accounting officer, or a person exercising an audit function of his, and the information could be lawfully disclosed to that officer or person by authority A.

(2) Where authority A is a district council, the enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, if—

(a) the disclosure is to the council's chief financial officer, or a person exercising an audit function of his; and

(b) the information could be lawfully disclosed to that officer or person by the council.

(3) In this paragraph—

"accounting officer" means—

(a) an officer appointed as such an officer by the Department of Finance and Personnel;

(b) an officer appointed by the Treasury under**[**[F1] section 5(6) or (8) of the Government Resources and Accounts Act 2000 (resource accounts)**]** or section 4 of the Government Trading Funds Act 1973;

"audit function", in relation to the Comptroller, includes any function under Part III of the Audit (Northern Ireland) Order 1987 or Part II of the National Audit Act 1983 (examinations into economy, efficiency and effectiveness);

"chief financial officer" has the meaning assigned by section 148(1) of the Local Government Act (Northern Ireland) 1972;

"Comptroller" means the Comptroller and Auditor General for Northern Ireland or the Comptroller and Auditor General of the United Kingdom,

F1 2001 c. 6 (NI)

Implied term of contractor A's contract

8. It is an implied term of any contract made between contractor A and authority A and relating to the exercise of the relevant function that contractor A shall take all reasonable steps to secure that any relevant information—

(a) which is obtained by him or an employee of his; and

(b) the disclosure of which is restricted by any enactment or obligation,

is not disclosed at any time (whether or not during the subsistence of the contract) to any other person in contravention of the enactment or in breach of the obligation.

Unauthorised disclosures

9.—(1) This paragraph applies where—

(a) any information is disclosed to any person in accordance with paragraphs 2 to 7 ("the original disclosure"); and

(b) that person, or any other person to whom the information is subsequently so disclosed, discloses the information otherwise than in accordance with paragraphs 2 to 7 ("the unauthorised disclosure").

(2) If the original disclosure was restricted by an enactment, the enactment shall apply in relation to the person making the unauthorised disclosure as if—

(a) he had obtained the information by virtue of the same provision as the person who made the original disclosure;

(b) where the enactment would not have restricted that disclosure if the person who made it had not fallen within a particular class, he fell within that class.

(3) If the original disclosure was restricted by an obligation, the person making the unauthorised disclosure shall be treated for all purposes as if he were subject to that obligation.

Interpretation

10.—(1) In this Schedule—

"ancillary services" means services certified by authority A (whether in the authorisation or otherwise) to be services appearing to it to be I calculated to facilitate, or to be conducive or incidental to, the exercise of the relevant function;

"authorised officer", in relation to a Department, Minister, office-. holder or district council, means any officer of the Department, Minister, office-holder or council who is authorised by it or him to disclose or (as the case may be) obtain the information in question;

"employee", in relation to contractor A, includes any person who performs ancillary services for that contractor, and any employee of such a person;

"related function" means any function of authority A which is certified by that authority (whether in the authorisation or otherwise) to be a function which is related to the relevant function.

(2) For the purposes of sub-paragraph (1), a function of authority A is related to another function of that authority if information—

(a) which is obtained in or in connection with the exercise of either function; and

(b) the disclosure of which is restricted by any enactment or by any obligation of confidentiality,

can lawfully be used by that authority for the purpose of facilitating the exercise of the other function.

(3) In this Schedule—

(a) any reference to another person is a reference to a person other than contractor A;

(b) any reference to another Department, Minister, office-holder or district council is a reference to a Department, Minister, office-holder or district council other than authority A.

Status:
Point in time view as at 01/01/2006.

Changes to legislation:
There are currently no known outstanding effects for the The Deregulation and Contracting Out (Northern Ireland) Order 1996.