

Status: Point in time view as at 03/01/1995.

Changes to legislation: Deregulation and Contracting Out Act 1994, SCHEDULE 15 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 15

Section 75.

RESTRICTIONS ON DISCLOSURE OF INFORMATION

Modifications etc. (not altering text)

- C1** Sch. 15 modified (3.1.1995) by 1984 c. 58, s. 43C (as inserted (3.1.1995) by 1994 c. 40, ss. 76, 82(2), Sch. 16 para. 7)

Preliminary

- 1 (1) Paragraphs 2 to 5, 7 and 8 below apply where—
- (a) a person (contractor A) is authorised, whether by virtue of an order made under section 69 or 70 above or otherwise, to exercise any function (the relevant function) of a Minister, office-holder or local authority (authority A); and
 - (b) the disclosure of relevant information, that is, information obtained, whether before or after the commencement of this Part of this Act, 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 below apply where—
- (a) a person (contractor A) is authorised, whether by virtue of an order made under section 69 or 70 above or otherwise, to exercise any function (the relevant function) of a Minister, office-holder or local authority (authority A); and
 - (b) the disclosure of relevant information, that is, information obtained, whether before or after the commencement of this Part of this Act, in or in connection with the exercise of any function of another Minister, office-holder or local authority (authority E), is restricted by any enactment or by any obligation of confidentiality.

Disclosures between contracting parties etc.

- 2 The enactment or obligation shall 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 Minister, office-holder or local authority (authority B), between contractor A or an employee of his and authority B or an authorised officer of that authority,

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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, whether by virtue of an order under section 69 or 70 above or otherwise, to exercise the relevant function or a related function.
- (2) The enactment or obligation shall 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, whether by virtue of an order under section 69 or 70 above or otherwise, to exercise a function of another Minister, office-holder or local authority (authority C).
- (2) The enactment or obligation shall 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 shall not prevent or penalise the disclosure of relevant information by contractor A or an employee of his to another Minister, office-holder or local authority (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

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- (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 shall 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 Minister or office-holder, the enactment or obligation shall 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 lawfully be 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 lawfully be disclosed to that officer or person by authority A.
- (2) Where authority A is a local authority, the enactment or obligation shall not prevent or penalise the disclosure of relevant information by contractor A or an employee of his if—
- (a) the disclosure is to the authority's chief finance officer, or a person exercising an audit function of his; and
 - (b) the information could lawfully be disclosed to that officer or person by the authority.

- (3) In this paragraph—

“accounting officer” means an officer appointed by the Treasury under section 22 of the Exchequer and Audit Departments Act ^{M1} 1866 or section 4 of the Government Trading Funds Act ^{M2} 1973;

“audit function”, in relation to the Comptroller, includes any function under Part II of the National Audit Act ^{M3} 1983 or Part III of the Audit (Northern Ireland) Order ^{M4} 1987 (examinations into economy, efficiency and effectiveness);

“chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act ^{M5} 1989;

“Comptroller” means the Comptroller and Auditor General or the Comptroller and Auditor General for Northern Ireland.

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Marginal Citations

- M1** 1866 c. 39.
- M2** 1973 c. 63.
- M3** 1983 c. 44.
- M4** S.I. 1987/460 (N.I. 5).
- M5** 1989 c. 42.

Implied term of contractor A's contract

- 8 It shall be 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 above (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 above (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; and
 - (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: general

- 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 calculated to facilitate, or to be conducive or incidental to, the exercise of the relevant function;
- “authorised officer”, in relation to a Minister, office-holder or local authority, means any officer of the Minister, office-holder or local authority who is authorised by him or it to disclose or (as the case may be) obtain the information in question;

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“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 appearing to it to be a function which is related to the relevant function.

(2) For the purposes of sub-paragraph (1) above 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; and
- (b) any reference to another Minister, office-holder or local authority is a reference to a Minister, office-holder or local authority other than authority A.

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