



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIII

#### PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

##### *The public record*

#### **347 The record of authorised persons etc**

- (1) The Authority must maintain a record of every—
  - (a) person who appears to the Authority to be an authorised person;
  - (b) authorised unit trust scheme;
  - (c) authorised open-ended investment company;
  - (d) recognised scheme;
  - (e) recognised investment exchange;
  - (f) recognised clearing house;
  - (g) individual to whom a prohibition order relates;
  - (h) approved person; and
  - (i) person falling within such other class (if any) as the Authority may determine.
- (2) The record must include such information as the Authority considers appropriate and at least the following information—
  - (a) in the case of a person appearing to the Authority to be an authorised person—
    - (i) information as to the services which he holds himself out as able to provide; and
    - (ii) any address of which the Authority is aware at which a notice or other document may be served on him;
  - (b) in the case of an authorised unit trust scheme, the name and address of the manager and trustee of the scheme;
  - (c) in the case of an authorised open-ended investment company, the name and address of—

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- (i) the company;
    - (ii) if it has only one director, the director; and
    - (iii) its depositary (if any);
  - (d) in the case of a recognised scheme, the name and address of—
    - (i) the operator of the scheme; and
    - (ii) any representative of the operator in the United Kingdom;
  - (e) in the case of a recognised investment exchange or recognised clearing house, the name and address of the exchange or clearing house;
  - (f) in the case of an individual to whom a prohibition order relates—
    - (i) his name; and
    - (ii) details of the effect of the order;
  - (g) in the case of a person who is an approved person—
    - (i) his name;
    - (ii) the name of the relevant authorised person;
    - (iii) if the approved person is performing a controlled function under an arrangement with a contractor of the relevant authorised person, the name of the contractor.
- (3) If it appears to the Authority that a person in respect of whom there is an entry in the record as a result of one of the paragraphs of subsection (1) has ceased to be a person to whom that paragraph applies, the Authority may remove the entry from the record.
- (4) But if the Authority decides not to remove the entry, it must—
  - (a) make a note to that effect in the record; and
  - (b) state why it considers that the person has ceased to be a person to whom that paragraph applies.
- (5) The Authority must—
  - (a) make the record available for inspection by members of the public in a legible form at such times and in such place or places as the Authority may determine; and
  - (b) provide a certified copy of the record, or any part of it, to any person who asks for it—
    - (i) on payment of the fee (if any) fixed by the Authority; and
    - (ii) in a form (either written or electronic) in which it is legible to the person asking for it.
- (6) The Authority may—
  - (a) publish the record, or any part of it;
  - (b) exploit commercially the information contained in the record, or any part of that information.
- (7) “Authorised unit trust scheme”, “authorised open-ended investment company” and “recognised scheme” have the same meaning as in Part XVII, and associated expressions are to be read accordingly.
- (8) “Approved person” means a person in relation to whom the Authority has given its approval under section 59 and “controlled function” and “arrangement” have the same meaning as in that section.
- (9) “Relevant authorised person” has the meaning given in section 66.

### *Disclosure of information*

#### **348 Restrictions on disclosure of confidential information by Authority etc**

- (1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—
  - (a) the person from whom the primary recipient obtained the information; and
  - (b) if different, the person to whom it relates.
- (2) In this Part “confidential information” means information which—
  - (a) relates to the business or other affairs of any person;
  - (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and
  - (c) is not prevented from being confidential information by subsection (4).
- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
  - (a) by virtue of a requirement to provide it imposed by or under this Act;
  - (b) for other purposes as well as purposes mentioned in that subsection.
- (4) Information is not confidential information if—
  - (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or
  - (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.
- (5) Each of the following is a primary recipient for the purposes of this Part—
  - (a) the Authority;
  - (b) any person exercising functions conferred by Part VI on the competent authority;
  - (c) the Secretary of State;
  - (d) a person appointed to make a report under section 166;
  - (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
  - (f) any auditor or expert instructed by a person mentioned in those paragraphs.
- (6) In subsection (5)(f) “expert” includes—
  - (a) a competent person appointed by the competent authority under section 97;
  - (b) a competent person appointed by the Authority or the Secretary of State to conduct an investigation under Part XI;
  - (c) any body or person appointed under paragraph 6 of Schedule 1 to perform a function on behalf of the Authority.

#### **349 Exceptions from section 348**

- (1) Section 348 does not prevent a disclosure of confidential information which is—
  - (a) made for the purpose of facilitating the carrying out of a public function; and

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- (b) permitted by regulations made by the Treasury under this section.
- (2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind—
  - (a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;
  - (b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;
  - (c) by the Authority to the Treasury or the Secretary of State for any purpose;
  - (d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.
- (3) The regulations may also include provision—
  - (a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);
  - (b) restricting the uses to which confidential information disclosed under the regulations may be put.
- (4) In relation to confidential information, each of the following is a “recipient”—
  - (a) a primary recipient;
  - (b) a person obtaining the information directly or indirectly from a primary recipient.
- (5) “Public functions” includes—
  - (a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
  - (b) functions conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
  - (c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
  - (d) functions exercisable in relation to prescribed disciplinary proceedings.
- (6) “Enactment” includes—
  - (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.
- (7) “Subordinate legislation” has the meaning given in the Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.

### **350 Disclosure of information by the Inland Revenue**

- (1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—
  - (a) the Authority, or
  - (b) the Secretary of State,
 if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.

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- (2) A disclosure may only be made under subsection (1) by or under the authority of the Commissioners of Inland Revenue.
- (3) Section 348 does not apply to Revenue information.
- (4) Information obtained as a result of subsection (1) may not be used except—
  - (a) for the purpose of deciding whether to appoint an investigator under section 168;
  - (b) in the conduct of an investigation under section 168;
  - (c) in criminal proceedings brought against a person under this Act or the Criminal Justice Act 1993 as a result of an investigation under section 168;
  - (d) for the purpose of taking action under this Act against a person as a result of an investigation under section 168;
  - (e) in proceedings before the Tribunal as a result of action taken as mentioned in paragraph (d).
- (5) Information obtained as a result of subsection (1) may not be disclosed except—
  - (a) by or under the authority of the Commissioners of Inland Revenue;
  - (b) in proceedings mentioned in subsection (4)(c) or (e) or with a view to their institution.
- (6) Subsection (5) does not prevent the disclosure of information obtained as a result of subsection (1) to a person to whom it could have been disclosed under subsection (1).
- (7) “Revenue information” means information held by a person which it would be an offence under section 182 of the Finance Act 1989 for him to disclose.

### **351 Competition information**

- (1) A person is guilty of an offence if he has competition information (whether or not it was obtained by him) and improperly discloses it—
  - (a) if it relates to the affairs of an individual, during that individual’s lifetime;
  - (b) if it relates to any particular business of a body, while that business continues to be carried on.
- (2) For the purposes of subsection (1) a disclosure is improper unless it is made—
  - (a) with the consent of the person from whom it was obtained and, if different—
    - (i) the individual to whose affairs the information relates, or
    - (ii) the person for the time being carrying on the business to which the information relates;
  - (b) to facilitate the performance by a person mentioned in the first column of the table set out in Part I of Schedule 19 of a function mentioned in the second column of that table;
  - (c) in pursuance of a Community obligation;
  - (d) for the purpose of criminal proceedings in any part of the United Kingdom;
  - (e) in connection with the investigation of any criminal offence triable in the United Kingdom or any part of the United Kingdom;
  - (f) with a view to the institution of, or otherwise for the purposes of, civil proceedings brought under or in connection with—
    - (i) a competition provision; or
    - (ii) a specified enactment.

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- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) Section 348 does not apply to competition information.
- (5) “Competition information” means information which—
  - (a) relates to the affairs of a particular individual or body;
  - (b) is not otherwise in the public domain; and
  - (c) was obtained under or by virtue of a competition provision.
- (6) “Competition provision” means any provision of—
  - (a) an order made under section 95;
  - (b) Chapter III of Part X; or
  - (c) Chapter II of Part XVIII.
- (7) “Specified enactment” means an enactment specified in Part II of Schedule 19.

### **352 Offences**

- (1) A person who discloses information in contravention of section 348 or 350(5) is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (3) A person is guilty of an offence if, in contravention of any provision of regulations made under section 349, he uses information which has been disclosed to him in accordance with the regulations.
- (4) A person is guilty of an offence if, in contravention of subsection (4) of section 350, he uses information which has been disclosed to him in accordance with that section.
- (5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.
- (6) In proceedings for an offence under this section it is a defence for the accused to prove—
  - (a) that he did not know and had no reason to suspect that the information was confidential information or that it had been disclosed in accordance with section 350;
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### **353 Removal of other restrictions on disclosure**

- (1) The Treasury may make regulations permitting the disclosure of any information, or of information of a prescribed kind—

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- (a) by prescribed persons for the purpose of assisting or enabling them to discharge prescribed functions under this Act or any rules or regulations made under it;
  - (b) by prescribed persons, or persons of a prescribed description, to the Authority for the purpose of assisting or enabling the Authority to discharge prescribed functions.
- (2) Regulations under this section may not make any provision in relation to the disclosure of confidential information by primary recipients or by any person obtaining confidential information directly or indirectly from a primary recipient.
- (3) If a person discloses any information as permitted by regulations under this section the disclosure is not to be taken as a contravention of any duty to which he is subject.

### *Co-operation*

#### **354 Authority's duty to co-operate with others**

- (1) The Authority must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—
- (a) similar to those of the Authority; or
  - (b) in relation to the prevention or detection of financial crime.
- (2) Co-operation may include the sharing of information which the Authority is not prevented from disclosing.
- (3) “Financial crime” has the same meaning as in section 6.