

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Information

Permitted disclosure

Section 243: Overseas disclosures

618. This section specifies the circumstances under which information may be disclosed to overseas authorities.
619. *Subsections (1), (2) and (12)* permit a public authority to disclose specified information to any overseas public authority (as defined in *subsection (11)*) for the purpose of any criminal investigations or proceedings, or for civil investigations or proceedings that relate to competition or consumer matters. *Subsection (12)* specifically provides that disclosure may be made for the purposes of overseas civil proceedings under legislation that is equivalent to the domestic infringements and Community infringements set out in Part 8 of the Act.
620. *Subsection (3)* prevents the disclosure to any overseas authority of information that is held by any person or body that has been designated as an enforcer by the Secretary of State for the purposes of Part 8 of this Act under *subsection 213(4)*. It also prevents the disclosure to any overseas authority of any competition information obtained under the Financial Services and Markets Act 2000 and certain sensitive commercial information (for example, information connected to market and merger investigations).
621. *Subsection (4)* provides that the Secretary of State can prevent disclosure of information overseas if she thinks the proceedings or investigation for which the information has been requested would be more appropriately carried out by authorities in the UK or in another country. *Subsection (5)* requires the Secretary of State to take appropriate steps to bring any decision made by him under *subsection (4)* to the attention of persons likely to be affected by it.
622. *Subsection (6)* sets out the considerations that a public authority must take into account when deciding whether to disclose information overseas, namely whether the reason for the request is sufficiently serious to justify disclosure; the existence of appropriate protection against self-incrimination in criminal proceedings and for personal data in the requesting country; and the existence of any mutual assistance agreements covering the information concerned with the requesting country.
623. *Subsection (7)* states that protection against self-incrimination and of personal data will be appropriate if it corresponds to that provided in any part of the UK.
624. *Subsections (8) and (9)* give the Secretary of State the power, by order (subject to the negative resolution procedure) to modify, add to, or remove any of the considerations in *subsection (6)*.

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

625. *Subsection (10)* prevents information that is disclosed to overseas authorities from being further disclosed (without the permission of the UK authority from whom the information came). This prevents the overseas authority from using the information for any purpose other than the purpose for which it is disclosed by the UK public authority and from further disclosing it to other bodies or authorities. Should they wish to use it for a different purpose than that originally specified, a further request to the UK authority would have to be made.
626. It is accepted that *subsection (10)(a)* and *(b)* are essentially unenforceable as there are no sanctions that could be taken against an overseas authority that contravenes these conditions. However, it is envisaged that should an overseas authority breach these provisions it is unlikely that a UK authority would disclose any further information.
627. *Subsection (11)* defines an overseas public authority. For the purpose of this Part, an overseas public authority is any organisation involved in the conduct of criminal investigations or proceedings, and also those organisations involved in the conduct of any civil investigations or proceedings related to the enforcement of competition or consumer legislation. In reality, this will probably include police and security forces together with national competition authorities and organisations with powers linked to consumer legislation (these could be public or private bodies).