



Digital Economy Act 2017

2017 CHAPTER 30

PART 5

DIGITAL GOVERNMENT

VALID FROM 01/10/2017

CHAPTER 4

FRAUD AGAINST THE PUBLIC SECTOR

56 Disclosure of information to combat fraud against the public sector

- (1) A specified person may disclose information held by the person in connection with any of the person's functions to another specified person for the purposes of the taking of action in connection with fraud against a public authority.
- (2) In this section and in Schedule 8 “fraud against a public authority” means a fraud offence which involves—
 - (a) loss to a public authority, or
 - (b) the exposure of a public authority to a risk of loss.
- (3) In subsection (2)—
 - (a) “fraud offence” means an offence under section 1 of the Fraud Act 2006 or, in relation to Scotland, an offence of fraud, and
 - (b) “loss”, as it applies in relation to an offence under section 1 of the Fraud Act 2006, has the meaning given by section 5 of that Act.
- (4) For the purposes of this section and Schedule 8 taking action in connection with fraud against a public authority includes any of the following—
 - (a) preventing fraud of that kind;
 - (b) detecting fraud of that kind;

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- (c) investigating fraud of that kind;
 - (d) prosecuting fraud of that kind;
 - (e) bringing civil proceedings as a result of fraud of that kind;
 - (f) taking administrative action as a result of fraud of that kind.
- (5) In this Chapter “specified person” means a person specified, or of a description specified, in Schedule 8.
- (6) The appropriate national authority may by regulations amend Schedule 8 so as to add, remove or modify an entry relating to a person or description of person.
- (7) Regulations under subsection (6) may add an entry relating to a person or a description of person to Schedule 8 only if the following conditions are satisfied.
- (8) The first condition is that—
- (a) the person is a public authority or (as the case may be) each person of that description is a public authority, or
 - (b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.
- (9) The second condition is that the person or (as the case may be) a person of that description (“P” in either case)—
- (a) requires information from a public authority or a person providing services to a public authority to improve P’s ability to identify or reduce the risk of fraud against P or a public authority to which P provides services,
 - (b) has information which, if shared with a public authority or a person providing services to a public authority, has the potential to improve that authority’s or that person’s ability to identify or reduce the risk of fraud against that authority, or
 - (c) has functions of taking action in connection with fraud against a public authority, the exercise of which may be improved by the disclosure of information by or to P.
- (10) In the case of a person (“P”) who is a specified person merely because of providing services to a public authority, the reference in subsection (1) to the functions of a specified person is limited to the functions P exercises for that purpose.
- (11) In determining whether to make regulations under subsection (6) in relation to a person or description of person the appropriate national authority must have regard, in particular, to—
- (a) the systems and procedures for the secure handling of information by that person or persons of that description, and
 - (b) in the case of regulations which remove a person from Schedule 8, whether that person, or any person providing services to that person, has had regard to the code of practice under section 60 as required by that section.
- (12) Before making regulations under subsection (6) the appropriate national authority must consult—
- (a) the Information Commissioner,
 - (b) the Commissioners for Her Majesty’s Revenue and Customs,
 - (c) each other person who is the appropriate national authority in relation to regulations under subsection (6),

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- (d) where the appropriate national authority is not the relevant Minister, the Minister for the Cabinet Office, and
 - (e) such other persons as the appropriate national authority thinks appropriate.
- (13) The fact this section was not in force when consultation of the kind mentioned in subsection (12) took place is to be disregarded in determining whether there has been compliance with that subsection.
- (14) In this Chapter “public authority” means—
- (a) a person or body exercising functions of a public nature in the United Kingdom,
 - (b) a person or body entirely or substantially funded from public money,
 - (c) an office-holder appointed by a person or body falling within paragraph (a), or
 - (d) a body more than half of whose governing body or members are appointed by a person or body falling within paragraph (a).

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57 Further provisions about power in section 56

- (1) Personal information disclosed under section 56 may only be used by the person to whom it is disclosed for the purposes for which it was disclosed, subject to subsection (2).
- (2) Subsection (1) does not prevent the use of information by a person—
- (a) if the information has already lawfully been made available to the public,
 - (b) if the person to whom the information relates consents to its use for another purpose,
 - (c) for the prevention or detection of crime or the prevention of anti-social behaviour,
 - (d) for the purposes of a criminal investigation,
 - (e) for the purposes of legal proceedings (whether civil or criminal), or
 - (f) for the purposes of—
 - (i) preventing serious physical harm to a person,
 - (ii) preventing loss of human life,
 - (iii) safeguarding vulnerable adults or children,
 - (iv) responding to an emergency, or
 - (v) protecting national security.
- (3) In subsection (2)(c) “anti-social behaviour” means conduct that—
- (a) is likely to cause harassment, alarm or distress to any person, or
 - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.
- (4) Subsection (2) does not apply to information disclosed to a person under section 56 by the Revenue and Customs; but such information may be used by that person for purposes other than those for which it was disclosed with the consent of the Commissioners for Her Majesty's Revenue and Customs (which may be general or specific).

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- (5) For the purposes of this Chapter information is “personal information” if—
- (a) it relates to and identifies a particular person (including a body corporate), but
 - (b) it is not information about the internal administrative arrangements of a specified person.
- (6) For the purposes of subsection (1) information identifies a particular person if the identity of that person—
- (a) is specified in the information,
 - (b) can be deduced from the information, or
 - (c) can be deduced from the information taken together with any other information.
- (7) A disclosure under section 56 does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (8) But nothing in section 56 authorises the making of a disclosure which—
- (a) contravenes the Data Protection Act 1998, or
 - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (9) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (8)(b) has effect as if it included a reference to that Part.
- (10) Section 56 does not limit the circumstances in which information may be disclosed apart from that section.

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58 Confidentiality of personal information

- (1) Personal information received by a person (“P”) under section 56 may not be disclosed—
- (a) by P, or
 - (b) by any other person who has received it directly or indirectly from P.
- (2) Subsection (1) does not apply to a disclosure—
- (a) which is required or permitted by any enactment (including section 56),
 - (b) which is required by an EU obligation,
 - (c) which is made in pursuance of an order of the court,
 - (d) of information which has already lawfully been made available to the public,
 - (e) which is made for the prevention or detection of crime or the prevention of anti-social behaviour,
 - (f) which is made for the purposes of a criminal investigation,
 - (g) which is made for the purposes of legal proceedings (whether civil or criminal),

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- (h) which is a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)),
 - (i) consisting of the publication of information for the purposes of journalism, where the publication of the information is in the public interest,
 - (j) which is made with the consent of the person to whom it relates, or
 - (k) which is made for the purposes of—
 - (i) preventing serious physical harm to a person,
 - (ii) preventing loss of human life,
 - (iii) safeguarding vulnerable adults or children,
 - (iv) responding to an emergency, or
 - (v) protecting national security.
- (3) In subsection (2)(e) “anti-social behaviour” means conduct that—
- (a) is likely to cause harassment, alarm or distress to any person, or
 - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.
- (4) A person commits an offence if—
- (a) the person discloses personal information in contravention of subsection (1), and
 - (b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so.
- (5) A person who is guilty of an offence under subsection (4) is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.
- (6) A person who is guilty of an offence under subsection (4) is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both;
 - (b) in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
 - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.
- (7) In the application of subsection (6)(a) to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 the reference to 12 months is to be read as a reference to 6 months.
- (8) This section does not apply to personal information disclosed under section 56 by the Revenue and Customs.

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59 Information disclosed by the Revenue and Customs

- (1) Personal information disclosed by the Revenue and Customs under section 56 and received by a person may not be disclosed by that person.

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- (2) Subsection (1) does not apply to a disclosure which is made with the consent of the Commissioners for Her Majesty's Revenue and Customs (which may be general or specific).
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed—
 - (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public.
- (5) Subsections (4) to (7) of section 19 of the Commissioners for Revenue and Customs Act 2005 apply to an offence under subsection (3) as they apply to an offence under that section.

60 Code of practice

- (1) The relevant Minister must issue a code of practice about—
 - (a) the disclosure of information under section 56, and
 - (b) the use of information disclosed under that section.
- (2) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time).
- (3) A specified person must have regard to the code of practice in—
 - (a) disclosing information under section 56, and
 - (b) using information disclosed under that section.
- (4) The relevant Minister may from time to time revise and re-issue the code of practice.
- (5) Before issuing or reissuing the code of practice the relevant Minister must consult—
 - (a) the Information Commissioner,
 - (b) the Commissioners for Her Majesty's Revenue and Customs,
 - (c) the Scottish Ministers,
 - (d) the Welsh Ministers,
 - (e) the Department of Finance in Northern Ireland, and
 - (f) such other persons as the relevant Minister thinks appropriate.
- (6) The fact that this section was not in force when consultation of the kind mentioned in subsection (5) took place is to be disregarded in determining whether there has been compliance with that subsection.
- (7) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.
- (8) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.
- (9) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

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- (10) In subsection (9) “the 40 day period” means—
- (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
 - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.
- (11) For the purposes of subsection (10) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (12) As soon as is reasonably practicable after issuing or reissuing the code of practice the relevant Minister must lay, or arrange for the laying of, a copy of it before—
- (a) the Scottish Parliament,
 - (b) the National Assembly for Wales, and
 - (c) the Northern Ireland Assembly.
- (13) In disclosing information under section 56, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—
- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
 - (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.
- (14) The duty in subsection (13) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information.

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61 Duty to review operation of Chapter

- (1) As soon as is reasonably practicable after the end of three years beginning with the day on which this Chapter comes into force, the relevant Minister must review its operation for the purposes of deciding whether it should be amended or repealed.
- (2) Before carrying out the review the relevant Minister must publish the criteria by reference to which that determination will be made.
- (3) In carrying out the review the relevant Minister must consult—
 - (a) the Information Commissioner,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers,
 - (d) the Department of Finance in Northern Ireland, and
 - (e) such other persons as the relevant Minister thinks appropriate.
- (4) Once the review is completed the relevant Minister must—
 - (a) publish a report on its outcome, and
 - (b) lay, or arrange for the laying of, a copy of the report before—

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- (i) Parliament,
 - (ii) the Scottish Parliament,
 - (iii) the National Assembly for Wales, and
 - (iv) the Northern Ireland Assembly.
- (5) If as a result of the review the relevant Minister decides that this Chapter should be amended or repealed, the relevant Minister may by regulations amend or repeal it (as the case may be).
- (6) The power in subsection (5) to amend this Chapter—
- (a) may be exercised for the purposes only of improving the effectiveness of the operation of the power in section 56(1), and
 - (b) may not be used to remove any of the safeguards relating to the use or disclosure of information in section 57, 58 or 59.
- (7) The relevant Minister may only make regulations under subsection (5) with the consent of the Scottish Ministers if the regulations—
- (a) repeal this Chapter,
 - (b) amend or remove the power of the Scottish Ministers to make regulations under section 56(6),
 - (c) affect the disclosure of information under section 56 by a Scottish body to another such body,
 - (d) affect the use by a Scottish body of information disclosed under that section by such a body, or
 - (e) affect the further disclosure to a Scottish body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Scottish body.
- (8) The relevant Minister may only make regulations under subsection (5) with the consent of the Welsh Ministers if the regulations—
- (a) repeal this Chapter,
 - (b) amend or remove the power of the Welsh Ministers to make regulations under section 56(6),
 - (c) affect the disclosure of information under section 56 by a Welsh body to another such body,
 - (d) affect the use by a Welsh body of information disclosed under that section by such a body, or
 - (e) affect the further disclosure to a Welsh body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Welsh body.
- (9) The relevant Minister may only make regulations under subsection (5) with the consent of the Department of Finance in Northern Ireland if the regulations—
- (a) repeal this Chapter,
 - (b) amend or remove the power of the Department to make regulations under section 56(6),
 - (c) affect the disclosure of information under section 56 by a Northern Ireland body to another such body,
 - (d) affect the use by a Northern Ireland body of information disclosed under that section by such a body, or

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- (e) affect the further disclosure to a Northern Ireland body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Northern Ireland body.
- (10) The relevant Minister may only make regulations under subsection (5) with the consent of the Treasury in a case where the regulations could affect the disclosure of information by the Revenue and Customs.
- (11) Anything required to be published by this section is to be published in such manner as the relevant Minister thinks fit.

62 Regulations under this Chapter

- (1) Any power to make regulations under this Chapter is exercisable—
 - (a) in the case of regulations made by the relevant Minister or the Welsh Ministers, by statutory instrument, and
 - (b) in the case of regulations made by the Department of Finance in Northern Ireland, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)).
- (2) Regulations under this Chapter—
 - (a) may make different provision for different purposes;
 - (b) may contain consequential, supplementary, transitional or transitory provision or savings.
- (3) In the case of regulations under section 56(6) which amend Schedule 8 so as to add an entry relating to a person or description of person, this includes power to make provision in relation to information disclosed by that person or a person of that description which is similar to that made by section 59 in relation to information disclosed by the Revenue and Customs.
- (4) A statutory instrument containing regulations made under this Chapter by the relevant Minister may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Regulations made under section 56(6) by the Scottish Ministers are subject to the affirmative procedure.
- (6) A statutory instrument containing regulations made under section 56(6) by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (7) Regulations under section 56(6) may not be made by the Department of Finance in Northern Ireland unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (8) If a draft of a statutory instrument containing regulations under section 56(6) would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

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63 Interpretation of this Chapter

(1) In this Chapter—

“the appropriate national authority” means the relevant Minister, subject to subsections (2) to (4);

“enactment” includes—

- (a) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- (d) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

“functions” means functions of a public nature;

“Northern Ireland body” means—

- (a) a Minister within the meaning of the Northern Ireland Act 1998,
- (b) a Northern Ireland department,
- (c) a Northern Ireland public authority within the meaning of the Statistics and Registration Service Act 2007, or
- (d) a person providing services to a person within paragraph (a), (b) or (c);

“personal information” has the meaning given by section 57(5);

“public authority” has the meaning given by section 56(14);

“relevant Minister” means the Secretary of State or the Minister for the Cabinet Office;

“the Revenue and Customs” has the meaning given by section 17(3) of the Commissioners for Revenue and Customs Act 2005;

“Scottish body” means—

- (a) a person who is a part of the Scottish Administration,
- (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
- (c) a person providing services to a person within paragraph (a) or (b);

“specified person” has the meaning given by section 56(5);

“Welsh body” means—

- (a) a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006, or
- (b) a person providing services to a devolved Welsh authority as defined by that section.

(2) The Scottish Ministers are the appropriate national authority in relation to regulations under section 56(6) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Scottish body.

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- (3) The Welsh Ministers are the appropriate national authority in relation to regulations under section 56(6) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Welsh body.
- (4) The Department of Finance in Northern Ireland is the appropriate national authority in relation to regulations under section 56(6) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Northern Ireland body.

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