



dca

Department for
Constitutional Affairs
Justice, rights and democracy

Review of Statutory Prohibitions on Disclosure

Contents	
Introduction	1
1 Provisions already amended or repealed under the Freedom of Information Act	7
2 Provisions identified for amendment or repeal	9
Primary Legislation	9
Secondary Legislation	16
3 Provisions identified for ‘sunset clauses’	17
Primary Legislation	17
Secondary Legislation	21
4 Provisions to be retained	22
Primary Legislation	22
Secondary Legislation	40
5 Other provisions reviewed	47
Explanatory	47
Primary Legislation	49
Secondary Legislation	51
Annex A: Procedural Rules of Courts and Tribunals	54
Annex B: Provisions Repealed or amended by the Enterprise Act 2002	55
Primary Legislation	55
Secondary Legislation	55
Index	56

Introduction

Summary

Statutory bars to disclosure

Provisions contained in legislation (Acts, rules, regulations, orders etc.) that prohibit the disclosure of information.

This review has identified 210 statutory provisions which prohibit the disclosure of information under section 1 of the Freedom of Information Act 2000. Of these, 27 cannot be amended using the power in section 75 of the Freedom of Information Act. Another 238 provisions, which were identified as potentially operating as bars to disclosure, have been considered and found not to be so.

Of the provisions considered not to be bars to disclosure:

- 122 do not operate as bars to disclosure under the Freedom of Information Act 2000; and
- 116 have been repealed or amended by other legislation during the course of the review and are no longer bars to disclosure;

Of those provisions which are bars to disclosure but cannot be amended using the Freedom of Information Act power to remove or relax prohibitions on disclosure:

- 20 implement international confidentiality obligations and cannot be removed; and
- 7 were passed after 30 November 2000 and cannot be amended under the Freedom of Information Act.

Of the remaining 183 provisions which fall within the scope of the Freedom of Information Act power to remove or relax prohibitions on disclosure:

- 13 were amended or repealed by order under the Freedom of Information Act in November 2004;
- 40 will be amended or repealed under the Freedom of Information Act;
- 19 will be time limited under the Freedom of Information Act; and
- 111 will be retained (for other reasons) or are still under review.

Chapter 1 of this report sets out those prohibitions which have already been removed or relaxed using an Order under section 75 of the Freedom of Information Act.

Chapter 2 gives details of prohibitions which the Government will remove or relax using this power.

Chapter 3 details those prohibitions on disclosure into which the Government will put time limits so that they do not apply to information over the specified age.

Chapter 4 sets out the prohibitions on disclosure which will be retained in their present form. However, the Government will also continue to review the scope for additional repeals and amendments to these remaining prohibitions on disclosure.

Finally, Chapter 5 explains in more detail the limitations and scope of the power in section 75 of the Freedom of Information Act, and lists those remaining provisions which have been reviewed.

Beginning in 2005, the Government will prepare and bring forward a series of Orders under section 75 of the Freedom of Information Act to give effect to the commitments made in Chapters 2 and 3 of this report.

History

When the Government published the White Paper, *Your Right to Know* in 1997, it stated “we intend, ... where appropriate and consistent with European Community legislation, that the [Freedom of Information] Act should repeal or amend the many existing statutory bars to disclosure, ... bringing them into line with the harm and public interest tests”¹.

In 1998, given the difficulty of achieving this due to the number and variety of bars, the Government undertook to review the numerous prohibitions on disclosure case-by-case, and to publish the results. At the same time, the Government also undertook periodically to assess the scope for additional repeals or amendments after the Act came into force, in the light of the operation of the Act in practice.²

Three interim reports on the review have been published, in May and November 2002, and in November 2004. This report represents the conclusion of the Government’s initial review. It is a snapshot of the legislative position at the time of publication, and does not purport to list every single statutory prohibition on disclosure that exists. The Government will continue to assess the scope for further amendments and repeals.

Rationale

The Government has considered over 400 provisions during the course of this review. As explained below, many of those considered fall outside the scope of the power to repeal or amend. In relation to those falling within the scope of the power, the Government has considered whether each of them should be repealed, amended or retained.

¹ *Your Right to Know: The Government’s Proposals for a Freedom of Information of Act* (1997. Cm 3818) paragraph 3.20

² Government’s Response to the Third Report from the Select Committee on Public Administration (Session 1997-98) on *Your Right to Know*. (Memorandum to the Committee, published as an Annex to the Fourth Special Report, 21 July 1998)

The Government believes that some prohibitions are not suitable for repeal or amendment, even though they fall within the scope of the section 75 power. It is the Government's view that provisions meeting any one of the following four criteria may be retained:

- The provision protects information obtained under compulsion;
- The provision applies also to organisations which are not subject to Freedom of Information legislation, and it would not be practical or appropriate to have differing rules applying to disclosure;
- The provision implements an obligation on the UK stemming from international law; or
- The provision applies to a limited class of information, or in a limited range of circumstances, and a partial access regime (e.g. disclosure in summary form) exists.

Not all provisions which meet one of these criteria will necessarily be retained.

Furthermore, it may not always be appropriate completely to repeal a prohibition. In many cases, prevention of inappropriate disclosure of the information was considered so vital at the time of drafting that a criminal sanction exists against it, which should often be retained. In other cases, the prohibition on disclosure is contained within a section or paragraph dealing with other matters as well, making complete repeal impractical or inappropriate. Many prohibitions are also drafted to contain specific 'gateways', permitting the sharing of information between public authorities to enable the performance of their functions. Where this is the case, the prohibition often cannot be simply removed without also blocking or destroying these gateways. These provisions may be more suitable for amendment than repeal.

Many of the provisions listed in previous reports form part of procedural rules for courts or tribunals. Because of the need to maintain consistency between rules passed before and after November 2000, it will be more appropriate to make any amendments to all such rules simultaneously by means other than an Order under section 75 of the Freedom of Information Act. A list of these provisions can be found at Annex A.

Lastly, the Enterprise Act 2002 repealed or amended a large number of statutory prohibitions on disclosure, and replaced them with a single coherent access regime for consumer information. A list of these provisions can be found at Annex B.

Effect of Repeals or Amendments

It is important to make clear that removal or relaxation of a prohibition on disclosure will not mean that the information it protected will necessarily be disclosed. The Freedom of Information Act provides for a number of exemptions to the duty of disclosure, which protect interests such as national security, commercial interests of both public authorities and suppliers of information

to public authorities, information supplied in confidence and the personal information of persons other than the requester. Accordingly, where a statutory bar on disclosure has been removed, other exemptions may still apply to the information. However, the majority of the exemptions in the Freedom of Information Act are subject to a public interest test: where the public interest in disclosure outweighs the public interest in maintaining the exemption, the information must be released. In contrast, where a statutory prohibition applies, the Freedom of Information Act does not enable information to be disclosed even where it would be in the public interest to do so.

Time-Limits and ‘Sunset Clauses’

Many of the prohibitions considered during this review impose prohibitions on disclosure which apply forever, irrespective of the sensitivity of the information they protect and the likely consequences of its disclosure. The Government believes that this is excessive, and is committed where possible to ensuring that such prohibitions are time limited. This policy reflects the fact that the sensitivity of information generally diminishes over time: what it may be wrong to disclose today may be harmless in the future.

The Government will therefore be introducing ‘sunset clauses’ into those prohibitions which it believes should not be immediately subject to amendment or repeal. These sunset clauses will apply to the information not to the prohibition, and will prevent the prohibition from applying to information over the specified age. They will not require information to be proactively disclosed after the specified date, nor do they prevent any of the other exemptions that exist in the Freedom of Information Act from applying to it. However, the sunset clause will mean that, after the end of the specified time period, requests for the information may be considered under normal Freedom of Information procedures.

Scope of the Report

Legislative constraints

This report takes as its starting point the scope of the power in section 75 of the Freedom of Information Act 2000 to repeal or amend prohibitions on disclosure. Section 75 provides:

- 1) If, with respect to any enactment which prohibits the disclosure of information held by a public authority, it appears to the Secretary of State that by virtue of section 44(1)(a) the enactment is capable of preventing the disclosure of information under section 1, he may by order repeal or amend the enactment for the purpose of removing or relaxing the prohibition.

- 2) In subsection (1) –
 “enactment” means –
- (a) any enactment contained in an Act passed before or in the same Session as this Act, or
 - (b) any enactment contained in Northern Ireland legislation or subordinate legislation passed or made before the passing of this Act;

“information” includes unrecorded information.

Section 44(1)(a) provides that information is exempt from disclosure under section 1 of the Freedom of Information Act if its disclosure (otherwise than under section 1) by the public authority holding it is prohibited by or under any enactment. Orders under section 75 will therefore remove the prohibition (so that the prohibition no longer constitutes an exemption for the purposes of section 44(1)(a)), or relax it (so that the circumstances in which the prohibition will constitute an exemption are reduced).

Not all legislation prohibiting the disclosure of information will fall within the scope of the section 75 power. To do so, it must meet certain criteria:

- it must have been passed or made before 30 November 2000;
- it must apply, at least in some degree, to information held by a public authority (i.e. a body which is subject to the Freedom of Information Act 2000);
- it must actually forbid the disclosure of information.
- the prohibition on disclosure must apply to disclosures made under the Freedom of Information Act 2000; and
- it must be in force.

Much of the legislation identified during the course of this review fails to meet these criteria. It is therefore not within the power of section 75 of the Freedom of Information Act to repeal or amend such legislation. Details of those provisions which have appeared in interim reports but have subsequently been identified as outside the scope of the section 75 power can be found in Chapter 4 of this report.

Enactments passed after 30 November 2000 are not within the scope of the section 75 power. If any enactment (whenever it is passed) is not capable of preventing disclosure under section 1 of the Freedom of Information Act, it is incapable of giving rise to the exemption in section 44(1)(a), and also, by definition, outside the scope of the power in section 75.

This report sets out the Government’s view as to whether enactments are capable of preventing disclosure under s.1 of the Freedom of Information Act, and therefore fall within the scope of the section 75 order-making power.

It should always be borne in mind that statutory interpretation can be complex and technical, and something upon which only the courts can ultimately rule.

Environmental Information

The Environmental Information Regulations 2004 (SI 2004/3391) implement a European Directive (EC 2003/4) and provide a complementary but distinct access regime to information about environmental matters. Regulation 5(6) of the Environmental Information Regulations disapplies statutory restrictions on disclosure insofar as environmental information is concerned. The exemption in section 44(1)(a) of the Freedom of Information Act therefore cannot prevent the disclosure of environmental information (this is widely defined in the regulations). For this reason, section 75 cannot be used to amend or repeal prohibitions on disclosure that apply only to environmental information. Where a prohibition could apply to information about environmental and non-environmental matters, any amendment or repeal would only be effective in relation to non-environmental information. The Government considers it unlikely that a statutory provision is only ever capable of applying to environmental information, although in some cases the quantity of non-environmental information likely to be covered by a provision may be small.

Devolved Administrations

Scotland

Freedom of Information is a devolved matter, and Scotland has its own Freedom of Information regime under the Freedom of Information (Scotland) Act 2002. Scottish public authorities are not subject to the Freedom of Information Act 2000. Therefore, the power in section 75 cannot be used to repeal or amend legislation insofar as it applies to Scottish public authorities. There is an equivalent power in section 64 of the Freedom of Information (Scotland) Act, and therefore it falls to the Scottish Executive to consider whether any amendments made by the Westminster Government should also be made to apply to Scottish public authorities as well. The Department for Constitutional Affairs will work closely with the Scottish Executive to co-ordinate this process.

Northern Ireland

The Freedom of Information Act 2000 applies in Northern Ireland as it does in England and Wales. However, some of the legislation considered during this review does not. Where amendments or repeals are proposed in relation to legislation which does not apply in Northern Ireland, the Government will work closely with the Northern Ireland administration to consider whether equivalent changes should be made to the relevant Northern Irish legislation as well. Therefore, to avoid duplication of work, and to maintain consistency wherever possible between the laws applying in Great Britain and Northern Ireland, this review has not directly considered all the Northern Irish prohibitions on disclosure. Where Northern Ireland legislation was identified in previous reports, it has been included in this final report for consistency.

Chapter 1: Provisions already amended or repealed under the Freedom of Information Act

The first Order under section 75 of the Freedom of Information Act, the Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure) Order 2004 was passed by Parliament in December 2004. It came into force on 1 January 2005, coinciding with the coming into force of the Freedom of Information Act.

A copy of the Order can be found online at <http://www.opsi.gov.uk/si/si2004/20043363.htm>. It made changes to eight enactments:

Factories Act 1961, section 154

This item prohibited the disclosure of information relating to any manufacturing process or trade secret which had been gathered during the exercise of powers of entry under the 1961 Act. It was amended in the Order so that the prohibition no longer applies to disclosures made by public authorities.

Offices, Shops and Railway Premises Act 1963, section 59

This item prohibited the disclosure of any information obtained during the exercise of powers of entry under the 1963 Act. It was amended in the Order so that the prohibition no longer applies to public authorities.

Medicines Act 1968, section 118

This item prohibited the disclosure of information relating to any manufacturing process or trade secret which had been gathered during the exercise of powers of entry under section 111 of this Act, or any information furnished under the Act. It was amended in the Order so that the prohibition no longer applies to disclosures made by public authorities.

Health and Safety at Work etc. Act 1974, section 28

This item prohibited the disclosure of any 'relevant information' without the consent of the person who supplied it. It also prohibited the disclosure of any information gained during the exercise of powers conferred by sections 14 or 20 of the Act. It was amended in the Order so that the prohibition no longer applies to disclosures made by public authorities.

This prohibition on disclosure is also applied by other legislation, which makes use of the same enforcement mechanisms as the 1974 Act. This additional legislation, previously considered in this review, also now applies the amended version of section 28:

- Gas Appliances (Safety) Regulations 1995, regulation 30;
- Notification of New Substances Regulations 1993, regulation 18(1);
- Pressure Equipment Regulations 1999, Schedule 8 paragraph 1;
- Simple Pressure Vessels (Safety) Regulations 1991, Schedule 5 paragraph 1; and
- Supply of Machinery (Safety) Regulations 1992, Schedule 6 paragraph 1.

Biological Standards Act 1975, section 5

This item made it an offence for any person to disclose information obtained by him in the course of, and by virtue of his membership of the National Biological Standards Board. It was repealed entirely.

National Health Service Act 1977, schedule 11 paragraph 5

This item protected information relating to the businesses concerned with medical supplies by prohibiting any person who obtains information under section 57 of this Act, or under Schedule 11, from disclosing it. (Section 57 allows the Secretary of State to obtain information from companies in order to regulate the prices of various medicinal products.) Paragraph 5 of schedule 11 was amended in the Order so that the prohibition no longer applies to disclosures made by public authorities.

Audit Commission Act 1998, section 49

This section prohibited the disclosure of information obtained by the Audit Commission or persons acting on its behalf. The prohibition applied to disclosures made by the Audit Commission for England and Wales, and by private auditors working on its behalf, and related to information obtained under this Act or the Local Government Act 1999. This section was amended in the Order to enable public authorities such as the Audit Commission, but not private auditors, to disclose the information, unless doing so would, or would be likely to, prejudice the performance of their statutory functions.

Access to Justice Act 1999, section 20

This item prohibits the disclosure, without the consent of the individual concerned, of any information given by applicants for legal aid. This includes information on their financial circumstances, solicitors' opinions on the strength of their cases, and evidence and pleadings in assisted persons' cases. The prohibition applies to the disclosure of information furnished to the Legal Services Commission (or to any court, tribunal or other body or purpose on whom functions are imposed by the 1999 Act). The Order inserted a sunset clause of 100 years, so that the prohibition no longer applies to information over 100 years old.

Chapter 2: Provisions identified for amendment or repeal

The following provisions are currently capable of prohibiting the disclosure of information in response to an FOI request. They will be amended or repealed in order to relax or remove the prohibitions on disclosure. In most cases, this will be achieved by Order under section 75 of the Freedom of Information Act 2000.

Primary Legislation

Agricultural Marketing Act 1958, section 47(2)

This subsection prohibits the disclosure of any information gained in the exercise of a power under this Act. Subsection (3) makes breach of the prohibition a criminal offence. The prohibition is subject to a few specified exceptions, including for the purposes of bringing legal proceedings. This prohibition (insofar as it applies to non-environmental information) and criminal offence will be removed.

Agriculture Act 1967, section 24

This provision prohibits the disclosure of information which has been supplied or obtained under a 'levy scheme', or any other information relating to an undertaking, which has been obtained under Part I of the Agriculture Act 1967. The information may only be disclosed:

- with the consent of the person who supplied it;
- in a form which does not allow the identification of individuals;
- for purposes relating to criminal proceedings; or
- to specified individuals.

The prohibition will be removed.

Agriculture Act 1970, section 108(2)

This item makes it an offence to disclose information which has been acquired by the Home-Grown Cereals Authority in the exercise of its functions unless the disclosure is made with the consent of the supplier. The prohibition will be removed.

Agriculture and Horticulture Act 1964, section 13(6)

This section provides for inspectors to enter premises (other than private dwellings) in order to carry out inspections and take samples of 'regulated produce'. Subsection (6) makes it an offence for anyone who has entered premises in this way to disclose information relating to manufacturing processes or trade secrets which they obtained there. The prohibition will be removed insofar as it applies to disclosures made by 'public authorities' which are subject to the Freedom of Information Act 2000. Disclosure of

this information by individuals acting alone will remain an offence, as will disclosure by bodies or organisations which are not subject to the Freedom of Information Act.

Aircraft and Shipbuilding Industries Act 1977, section 52

This item prohibits the disclosure of information gathered under the previous section of this Act, other than with the consent of the person whose books or records supplied the information. Disclosure is also permitted for purposes connected with criminal proceedings, and to enable a Corporation or the Secretary of State to carry out their functions under the 1977 Act. This prohibition will not be removed entirely, but will be relaxed to align it more closely with the Freedom of Information Act regime.

Atomic Energy Act 1946, section 11

This section prohibits the disclosure of documents, plans, drawings, models or photographs which reveal information about atomic energy plants, and their methods and processes of operation (including proposed plants, methods and processes) if that information also relates the information to atomic energy. The Minister may specifically give his consent to disclosures of this information if he is satisfied that the information is not relevant for defence purposes. This prohibition will be relaxed to align it more closely with the Freedom of Information access regime.

Atomic Energy Act 1946, section 13

This section simply prohibits the disclosure of any information which has been obtained by a person in the exercise of powers under the 1946 Act. It will be removed.

Broadcasting Act 1990, section 196

This section provides for authorised persons to enter onto premises for the purposes of investigating or gathering evidence in relation to offences under the Act. Subsection (4) makes it an offence for any person who has entered premises under this section to disclose any information he obtained there. This prohibition will be relaxed to bring it into line with section 393 of the Communications Act 2003, which permits disclosure of information after a business ceases to be carried on, or where the supplier of the information consents to its disclosure.

Cereals Marketing Act 1965, section 17(2)

This item protects information supplied to, or obtained by, any person under any scheme made under section 16 of the Act. Disclosure is only permitted with the consent of the supplier of the information; in summary (or other anonymous) form; for the purposes of criminal proceedings; or to certain specified office-holders. Subsection (3)(c) makes disclosure in breach of the prohibition a criminal offence. This prohibition and offence provision will be removed.

Clean Air Act 1993, section 49

This provision prohibits the disclosure of information relating to trade secrets which have been obtained by a person under the 1993 Act.

The prohibition will be removed insofar as it applies to disclosures made by 'public authorities' which are subject to the Freedom of Information Act 2000. Disclosure of this information by individuals acting alone will remain an offence, as will disclosure by bodies or organisations which are not subject to the Freedom of Information Act.

Coast Protection Act 1949, section 25

This section provides for inspectors to enter onto private land in order to carry out various functions. Subsection (8) makes it an offence for anyone who has entered onto land in this way to disclose information relating to manufacturing processes or trade secrets which they obtained there. The prohibition also applies to anyone to whom this information has been disclosed. The prohibition will be removed insofar as it applies to disclosures made by 'public authorities' which are subject to the Freedom of Information Act 2000. Disclosure of this information by individuals acting alone will remain an offence, as will disclosure by bodies or organisations which are not subject to the Freedom of Information Act.

Courts and Legal Services Act 1990, section 49

This provision, which applies to disclosures made by the Authorised Conveyancing Practitioners Board, has never been commenced. Following the review by Sir David Clementi of the regulatory framework for legal services in England and Wales this provision will be repealed. This change may be effected by Order under section 75 of the Freedom of Information Act, or by other means as part of the Government's response to the recommendations made by Sir David Clementi.

Covent Garden Marketing Act 1961, section 32

This item prohibits the disclosure without consent of information supplied to the Covent Garden Market Authority under sections 28(7), 29 or 30 of the Act. These sections relate to the tolls and charges payable by market vendors and inspection of premises. This prohibition will be removed insofar as it applies to disclosures by public authorities (including the Covent Garden Market Authority).

Diseases of Fish Act 1983, section 9

Section 7 of this Act empowers the Minister to make orders which may require persons occupying inland fish farms to supply him with information. Section 9 makes it an offence to disclose information which has been supplied in this way, unless the disclosure is made:

- in an anonymous form;
- with the consent of the supplier;
- for the purposes of bringing criminal proceedings; or
- to enable the Environment Agency to carry out its functions.

The prohibition will be removed.

Environmental Protection Act 1990, schedule 3 paragraph 3

Paragraph 2 of this Schedule provides for inspectors to enter onto private land in order to ascertain whether or not a statutory nuisance exists, and to carry out associated work. Paragraph 3 makes it an offence for anyone who has entered onto land in this way to disclose information relating to trade secrets which they obtained there. The prohibition will be removed insofar as it applies to disclosures made by 'public authorities' which are subject to the Freedom of Information Act 2000. Disclosure of this information by individuals acting alone will remain an offence, as will disclosure by bodies or organisations which are not subject to the Freedom of Information Act.

Fisheries Act 1981, section 12

This item protects information obtained under the 1981 Act from being disclosed without the consent of the person carrying on the undertaking to which it relates. Disclosure is permitted for the purposes of legal proceedings. The information may also be disclosed to Ministers or the relevant Northern Ireland department for purposes related to the sea fish industry or the regulation of sea fishing. This prohibition will be removed.

Gas Act 1965, schedule 6 paragraph 9

This Schedule provides for authorised persons to enter onto private land for the purposes of preparing documents to be submitted to the Minister in connection with the making of a storage authorisation order, or for purposes connected with a claim for compensation under the Act. Paragraph 9 makes it an offence for anyone who has entered onto land in this way to disclose any information which they obtained there unless the disclosure is made in accordance with their duty (which does not include making disclosures under Freedom of Information). The prohibition will be removed insofar as it applies to disclosures made by public authorities which are subject to the Freedom of Information Act 2000. Disclosure of this information by individuals acting alone will remain an offence, as will disclosure by bodies or organisations which are not subject to the Freedom of Information Act.

Harbours Act 1964, section 46

Section 41 of this Act empowered the National Ports Council (since wound up) to require persons engaged in improving, maintaining or managing harbours to provide them with certain information. Section 46 prohibits any person who has obtained information under section 41 from disclosing it. If the supplier of the information consents to the disclosure, or the information can be disclosed in an anonymous, summary form, or the disclosure is needed for the purposes of criminal proceedings or to enable the Minister to discharge his functions under the 1964 Act, the information may be disclosed. This prohibition will be removed.

Human Fertilisation and Embryology Act 1990, section 33

Subsection (1) of this provision prevents persons who are, or have been, members or employees of the Human Fertilisation and Embryology Authority from disclosing information which they hold or held as a member or employee. The prohibition applies only to certain information held in registers which must be kept under the section 31 of the Act, and to information held or supplied

on terms or in circumstances requiring it to be held in confidence. The prohibition does not prevent the disclosure of information which does not identify any individual, or in various other circumstances.

Subsection (5) prohibits the disclosure of information by persons to whom a license (issued under the Act to permit them to store and use embryos and gametes to treat people and to carry out research) has been granted. Again, disclosures are permitted for various purposes and under various conditions including with the consent of the person(s) to whom the information relates or in an anonymous form.

The Government is conducting a separate review of the whole of this Act, and will shortly be holding a public consultation on many aspects of it. This review will include consideration of the confidentiality provisions of the Act, and their compatibility with the Freedom of Information and Data Protection Acts.

Industrial Organisation and Development Act 1947, section 5

This item protects information provided under the Act from being disclosed without the consent of the person owning the business to which it relates. The information may be disclosed in an anonymous form, so that details relating to any individual business cannot be identified. This prohibition will be removed.

Land Drainage Act 1991, section 70

This section applies the prohibition on disclosure in section 204 of the Water Resources Act 1991 to information obtained by the Environment Agency in relation to its functions under this Act.

When the bar in section 204 of the Water Resources Act is removed by Order under section 75, this provision will also cease to operate as a bar to disclosure.

Merchant Shipping Act 1995, section 222A(2)

This section relates to disclosure of information to and by general lighthouse authorities. Subsection (1) provides for information to be supplied to the lighthouse authorities, regardless of any obligation as to secrecy or other restriction on disclosure. Subsection (2) then provides that information which has been supplied in this way must not be disclosed further, other than for the purposes of collecting dues or for legal proceedings. This prohibition will be removed.

Merchant Shipping Act 1995, schedule 11A paragraph 8

This section relates to the disclosure of information to and by the Secretary of State or his officers. Subsection (1) provides for information to be supplied to the Secretary of State by any Minister of the Crown or Northern Ireland department, regardless of any obligation as to secrecy or other restriction on disclosure. Subsection (2) then provides that anyone who has obtained information in this way shall not disclose it further, other than for the purposes of any legal proceedings. This prohibition will be removed.

Public Health (Control of Disease) Act 1984, section 62(3)

This section prohibits the disclosure of information relating to manufacturing processes or trade secrets obtained by officers entering premises by virtue of section 61 of this Act.

This prohibition is similar to section 118 of the Medicines Act 1968, section 5 of the Biological Standards Act 1975 and 28(7) of the Health and Safety at Work etc. Act 1974. Consultation on amendments to all these sections took place in 2004, and they have since been amended to remove the prohibitions insofar as they applied to disclosures made by public authorities. Similarly, the prohibition in section 62 of the 1984 Act will also be removed.

Registered Designs Act 1949, section 5

The Patent Office is currently reviewing this Act. The review will include consideration about how best to bring this provision into line with the Freedom of Information Act. Subsequent changes to this provision may be achieved through an Order under section 75 of the Freedom of Information Act, or by other means.

Rent (Agriculture) Act 1976, section 30(4)

This item empowers the Minister to use powers in section 31 of the 1976 Act to obtain information about housing accommodation which is on agricultural or forestry land. Subsections (4)-(6) provide that the information must not be disclosed without the consent of the supplier, landowner or occupier, other than by the Minister or for the purposes of bringing criminal proceedings, and that breach of the prohibition on disclosure is a criminal offence. This prohibition and criminal offence will be removed.

Rivers (Prevention of Pollution) Act 1961, section 12

This section prohibits the disclosure of information which has been supplied in connection with an 'application for consent' or 'imposition of conditions' under this Act or the Rivers (Prevention of Pollution) Act 1951. It also prohibits the disclosure of information derived from any samples of effluent taken under the 1951 or 1961 Acts.

The provisions relating to applications for consent have since been repealed. They prescribed for the consent of river boards to be sought before effluent could be discharged into rivers. River boards could require that information be supplied to them before granting consent. River boards could also impose and vary conditions upon the permission to discharge effluent.

The prohibition will be removed insofar as it applies to information not covered by the Environmental Information Regulations 2004.

Sea Fish Industry Act 1970, section 14

This section makes it an offence to disclose information relating to any particular undertaking which has been obtained under, or by virtue of, this part of the 1970 Act. This prohibition will be removed.

Water Act 1989, section 174

This section makes it an offence to disclose information which relates to the affairs of any individual or to any particular business and which has been obtained by virtue of any of the provisions of this Act. The prohibition lasts for the lifetime of the individual or business, and the information may be disclosed with their consent. Certain other 'gateways' are permitted, allowing various public authorities to share this information to enable them to carry out their functions under various enactments. This prohibition will be removed.

Water Industry Act 1991, schedule 6 paragraph 5

This paragraph relates to information which has been obtained by persons who have entered premises under warrant or powers of entry under the Act. It makes it an offence for any such person to disclose information relating to manufacturing processes or trade secrets. This prohibition will be removed insofar as it applies to disclosures made by 'public authorities' which are subject to the Freedom of Information Act 2000. Disclosure of this information by individuals acting alone will remain an offence, as will disclosure by bodies or organisations which are not subject to the Freedom of Information Act.

Water Resources Act 1991, section 204

This section makes it an offence to disclose information which has been obtained by virtue of the Act, and which relates to the affairs of any individual or to any particular business. The prohibition lasts for the lifetime of the individual or business concerned. The information may be disclosed with the consent of the individual or business to which it relates. Disclosure is also specifically permitted between various public authorities to enable them to carry out their functions. This prohibition will be removed.

Water Resources Act 1991, section 205(2)

Section 198 requires that any person who proposes to sink a well or borehole must notify the Natural Environment Research Council (NERC) before doing so. They are required to keep a journal of progress and details of any tests carried out, and to supply the NERC with copies and any samples.

Section 205 permits persons providing information to the NERC to require them to keep it confidential, and subsection (2) prohibits the disclosure by the NERC of this information.

The prohibition will be removed in relation to any information which is not covered by the Environmental Information Regulations 2004.

Water Resources Act 1991, section 205(6)

Section 198 of this Act permits persons authorised by the Natural Environment Research Council to enter onto land to inspect wells and boreholes, to take samples and to take copies of documentation. Subsection (6) of section 205 makes it an offence for anyone who has entered onto land in this way to disclose information relating to manufacturing processes or trade secrets which he finds there.

This prohibition will be removed insofar as it relates to information not covered by the Environmental Information Regulations 2004.

Secondary Legislation

Health and Safety at Work (Northern Ireland) Order 1978, paragraph 30

This paragraph replicates section 28 of the Health and Safety at Work etc. Act 1974, which was amended in the first Order under section 75. This paragraph will therefore be amended in the same way.

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, paragraph 24

This paragraph will shortly be replaced by Article 23 of the Access to Justice (Northern Ireland) Order 2003, which replicates section 20 of the Access to Justice Act 1999. Regulations being made under that Article can prescribe the circumstances in which disclosure of information about individuals seeking or receiving civil legal services, or criminal defence services funded by the Northern Ireland Legal Services Commission may be permitted. These regulations will contain a sunset clause permitting disclosure of this information once it reaches 100 years old, bringing the prohibition in Article 23 into line with the amendments already made to section 20 of the 1999 Act in the first Order under section 75 of the Freedom of Information Act.

Milk Marketing Boards (Special Conditions) Regulations 1981, regulation 7

Regulation 6 provides for the Secretary of State to require persons engaged in the sale of milk products to supply him with information. Regulation 7 provides that information relating to any particular sale of milk products which has been obtained in this way shall not be disclosed without the written consent of the person who supplied it. The consent of every person who was a party to the sale and whose interests might be affected by the disclosure is also needed. Disclosure is only permitted to Ministers, persons acting on their behalf, institutions of the European Communities or for the purposes of criminal proceedings under the regulations. This prohibition will be removed.

Notification of New Substances (Northern Ireland) Regulations 1994, regulation 18(1)

Simple Pressure Vessels (Safety) Regulations 1991, schedule 5 paragraph 2

Supply of Machinery (Safety) Regulations 1992, schedule 6 paragraph 2

Pressure Equipment Regulations 1999, schedule 8 paragraph 3

These provisions apply the prohibition in regulation 30 of the Health and Safety at Work (Northern Ireland) Order 1978 (above).

Chapter 3: Provisions identified for 'sunset clauses'

The following provisions are currently capable of prohibiting the disclosure of information in response to a Freedom of Information request. The Government believes in each case that the provision should be retained in relation to information below the specified age, but that the prohibition on disclosure should not apply thereafter. These provisions will be amended by Order under section 75 accordingly.

The length of sunset clause in each case reflects the rate at which the sensitivity of the information is expected to diminish. Generally, longer sunset clauses will be used in relation to information relating to individuals (personal information), whilst shorter sunset clauses will apply to other information.

Primary Legislation

Agriculture Act 1970, section 83

This provision prohibits the disclosure of information about the regulation of compositional and labelling standards for fertilisers and feeding stuffs. Section 83 obliges local authority inspectors not to disclose information about any manufacturing process or trade secret obtained by them from premises which they have entered while enforcing other provisions of the 1970 Act. This provision protects information obtained under compulsion, and will be substantially retained. A 50-year sunset clause will be added.

Airports Act 1986, section 74

This section imposes a prohibition on the disclosure of information relating to particular businesses which has been obtained under this Act. The information may only be disclosed with the consent of the person for the time being carrying on the business, or for bringing legal proceedings, or in order to fulfil any European Community obligation. A sunset clause of 30 years will be introduced.

Coal Industry Act 1994, section 59

This item requires that the Coal Authority make arrangements to ensure that information acquired under the Act is not disclosed without the consent of the individual or business to which it relates. The protection currently lasts for the lifetime of the individual or business. This section also binds the Authority to any confidentiality clause contained in any license issued under the Act. The information protected is obtained under compulsion, and this provision will be substantially retained. A sunset clause of 30 years will be introduced.

Companies Act 1985, section 449

This section places a bar on disclosure of information relating to a company which has been obtained by the exercise of the Secretary of State's power in section 447 of the Act. This power allows him to require production and explanation of documents by a company or other person. There are 'gateways' which permit disclosure of information to various bodies for the purposes of law enforcement or other regulatory purposes. This power is also exercised by the Inspector of Companies to investigate information received

about the conduct of company affairs. The information is supplied under compulsion, and the protection will be retained. A sunset clause of 70 years will be introduced.

Companies Act 1989, section 86

This section places a bar on the disclosure of information relating to the business or other affairs of a person, which has been supplied by an overseas regulatory authority. The information will have been supplied in connection with a request for assistance or obtained in the exercise of the Secretary of State's discretionary powers in section 83 of this Act. These powers may be used to place a requirement upon a company or other person to produce documents and/or to furnish information for the purpose of assisting an overseas regulatory authority with functions that relate to companies or financial services. Under section 87, there are 'gateways' allowing transfer of information to other public authorities for law enforcement or regulatory purposes. The information is obtained under compulsion, and the protection will be retained. A sunset clause of 70 years will be introduced.

Criminal Appeal Act 1995, section 23

This section makes it an offence for present and former staff of the Criminal Cases Review Commission to disclose information which has been obtained by the Commission in the exercise of any of its functions. Section 24 provides for some exceptions to the prohibition, enabling disclosures to be made for purposes including criminal, disciplinary or civil proceedings, in reports required under the Act, or for other functions under the Act. Disclosure is also permitted if it is authorised by a member of the Commission, although members are restricted in the circumstances in which they can authorise disclosure.

The prohibition is limited in the information to which it relates, and a partial access regime exists via section 24. A two-stage sunset clause will be introduced enabling information to be disclosed after 75 years if the person, body or organisation which supplied the information consents (or cannot be found after reasonable efforts). After 90 years, the information may be disclosed notwithstanding whether consent has been obtained.

Criminal Appeal Act 1995, section 25

Section 17 of this Act can be used to compel the disclosure of information, regardless of any obligation of secrecy (statutory or otherwise). Where information has been supplied under section 17, the supplier may notify the Criminal Cases Review Commission that the information must not be disclosed without his consent. This consent must not be withheld unless the supplier of the information would have been prohibited from making the disclosure by any obligation of secrecy, and it is reasonable to refuse consent. Suppliers are also required to take reasonable steps to obtain authorisation to make disclosures, before relying on an obligation of secrecy to withhold consent.

The prohibition protects information obtained under compulsion, and will therefore be retained. Because disclosure is already permitted with the consent of the supplier, a sunset clause of 90 years (in line with the second stage of the sunset clause for section 23 of this Act) will be introduced.

Energy Act 1976, schedule 2 paragraph 7

This provision prohibits the disclosure of any information obtained by virtue of this Act. Disclosure is permitted with the consent of the person who supplied the information, and the owner of any goods, or occupier of any premises to which the information relates. It can also be disclosed in anonymous form; for the purposes of various international obligations; in relation to the functions of any government department or for instituting criminal proceedings. A sunset clause of 20 years will be introduced.

Goods Vehicles (Licensing of Operators) Act 1995, section 35

This section provides that any information with respect to a particular trade or business which is given in evidence at an inquiry under this Act whilst admission to the inquiry is restricted shall not be disclosed whilst that trade or business continues to be carried on, without the consent of the person carrying on the business. This information is subsequently held by the Vehicle and Operator Services Agency (an agency of the Department for Transport). A sunset clause of 30 years will be inserted.

Greater London Authority Act 1999, section 235

This provision prohibits the disclosure of information supplied to the Public Private Partnership Arbiter by the various companies under public-private partnership agreements with London Underground. The information can be disclosed with the consent of the company which supplied it, and disclosure gateways exist for various other purposes. A sunset clause of 30 years will be inserted.

Highways Act 1980, section 292

This section prohibits the disclosure of information obtained during the exercise of powers of entry under sections 289 or 291 of the Act. These sections authorise persons to enter land including factories, workshops or other workplaces in order to carry out surveys and to maintain, alter or remove structures which belong to the highway authority. A sunset clause of 30 years will be introduced.

Industrial Training Act 1982, section 6

This provision grants powers to Industrial Training Boards to obtain information from employers. It also provides for an offence if that information is disclosed in such a way as to identify the individuals concerned without their consent. The information is gathered under compulsion and so the protection will be retained. A sunset clause of 10 years will be inserted.

National Minimum Wage Act 1998, section 15

This section relates to the disclosure of information obtained by officers acting for the purposes of this Act. Officers can require that information be provided and explained to them, and have the power to enter any premises for these purposes. Section 15 permits the information to be disclosed, with the authority of the Secretary of State, to other 'relevant authorities' for purposes connected with the 1998 Act. Subsection (5) provides that information which has been disclosed in this way shall not be further disclosed other than (with the authorisation of the Secretary of State) for the purposes of civil or criminal proceedings related to the 1998 Act. A sunset clause of 70 years will be inserted.

National Minimum Wage Act 1998, section 16

This section relates to the disclosure of information obtained by agricultural wages officers acting for the purposes of the various Agricultural Wages Acts. This information may be supplied to the Secretary of State and other 'relevant authorities' for purposes connected with the 1998 Act. Subsection (4) provides that the information which has been supplied in this way shall not be further disclosed other than (with the authorisation of the Secretary of State) for the purposes of civil or criminal proceedings relating to the 1998 Act. A sunset clause of 70 years will be inserted.

Postal Services Act 2000, schedule 7 paragraph 1

This item prohibits the disclosure of any information relating to the affairs of any individual or business which has been obtained by virtue of the Act. The prohibition currently lasts for the lifetime of the individual or business, and disclosure is permitted in certain circumstances. A sunset clause of 50 years will be inserted.

Shipping and Trading Interests (Protection) Act 1995, section 3

This section prohibits the disclosure of information obtained under, or in connection with sections 1 and 2 of this Act, unless the disclosure is made: with the consent of the supplier of the information; for the purposes of legal proceedings; or in pursuance of any European Community obligation. Section 1 permits the Secretary of State to require persons to supply him with information to enable him to determine whether he needs to take action under that section to protect British shipping interests. A sunset clause of 30 years will be inserted.

Secondary Legislation

Fossil Fuel Levy Regulations 1990, regulation 36

This item restricts the use of information provided under the Regulations to purposes connected with the Fossil Fuel levy. A 30-year sunset clause will be inserted.

General Teaching Council for England (Registration of Teachers) Regulations 2000, regulation 16

General Teaching Council for Wales (Functions) Regulations 2000, regulation 16

Both these regulations relate to the supply of information about teachers' qualifications and training to their employers and prospective employers. The General Teaching Councils maintain registers of teachers and must supply this information to present or prospective employers on request. Once the information has been supplied to them, it must not be further disclosed (other than to the teacher to whom it relates). A sunset clause of 100 years will be introduced insofar as this prohibition would operate on public authorities. The bar also applies to teacher training agencies and private schools, which are not subject to the Freedom of Information Act, and so will not be affected by the sunset clause.

Chapter 4: Provisions to be retained or still under review

The Government believes that the following provisions should be retained. As stated in the introduction, this report represents a snapshot of the legislative position at the time of publication, and does not override the Government's commitment to continuing to review the need for statutory prohibitions in the light of the Freedom of Information Act's operation.

Primary Legislation

Agricultural Statistics Act 1979, section 9

This section prohibits the disclosure of information relating to any particular land or business which has been obtained under the power in section 1 of the 1979 Act.

The prohibition does not apply if the person by whom the information was supplied, and any other owner or occupier of the land whose interests may be affected by the disclosure, consents to the information being disclosed.

The Minister may also disclose the information to certain specified people and offices, and also has a discretion to disclose very limited information to any person if he believes that to do so is necessary in the public interest.

The prohibition is limited in the information to which it applies, and a partial access regime exists. Furthermore, much of the information to which this section relates will be "environmental information" which would not be exempt from disclosure by virtue of section 44(1)(a) of the Freedom of Information Act. This prohibition will be retained.

Air Force Act 1955, section 25

This provision makes it an offence to disclose intelligence information to an enemy. It is specific to people subject to the Air Force Act (largely anyone in, or working for the Royal Air Force), and only prohibits the supply of information to 'the enemy'. The bar is specific, and time-limited (because it only applies for as long as the potential recipient of the information is 'an enemy'). It will therefore be retained.

Air Force Act 1955, section 60

This item prohibits the disclosure by any person subject to air-force law, of any information which would, or might, be useful to an enemy. The item is specific and time-limited. It will be retained for the same reasons as set out above in relation to section 25 of this Act.

Airports Act 1986, section 30

This section permits the Secretary of State to give directions to airport operators in the interests of national security or international relations. It applies in the same way as section 94 of the Telecommunications Act 1984 below, and will be retained for the same reasons.

Animals (Scientific Procedures) Act 1986, section 24

As indicated by Baroness Scotland of Asthal in July 2004³, this provision will be retained and reviewed again in 2 years' time.

Army Act 1955, section 25

This provision makes it an offence to disclose intelligence information to an enemy. It is specific to people subject to the Army Act (largely anyone in, or working for the Army), and only prohibits the supply of information to 'the enemy'. The bar is specific, and time-limited (because it only applies for as long as the potential recipient of the information is 'an enemy'). It will therefore be retained unchanged.

Army Act 1955, section 60

This item prohibits the disclosure by any person subject to army law, of any information which would, or might, be useful to an enemy. The item is specific and time-limited. It will be retained for the same reasons as set out above in relation to section 25 of this Act.

Bank of England Act 1998, Schedule 7 paragraph 1(3)

This provision prohibits the Bank from disclosing information obtained under section 17, or paragraph 9 of Schedule 2 to the 1998 Act. Section 17 is contained within Part II of the Act, which is concerned with monetary policy. The Freedom of Information Act does not apply to information held by the Bank in connection with its functions relating to monetary policy, and this part of the prohibition is therefore outside the scope of the power in section 75 of the Freedom of Information Act.

Schedule 2 of the 1998 Act concerns cash ratio deposits. Paragraph 9 confers on the Bank the power to obtain from certain deposit-takers information which the Bank considers it necessary or expedient to have for the purposes of its functions under Schedule 2.

Paragraph 1(3) of Schedule 7 prohibits the Bank, and any person obtaining information from the Bank, from disclosing 'restricted information' – i.e. information which has been obtained under either of these two powers and relates to the business or other affairs of a person. However, the prohibition does not apply to information which has already been made public by other sources, or which is framed in such a way as not to identify any particular person. The Bank may also disclose information to enable or assist the Bank to discharge certain of its functions. It may also disclose information to specific persons or organisations in order to enable them to discharge specific functions. In some cases, persons to whom the Bank discloses information are able to make onward disclosures with the Bank's consent. During 2005, the Government will consider whether any form of sunset clause might be appropriate in relation to this information.

³ Lords Hansard: 1 July 2004 Column WS15

Building Act 1984, section 96

This item prohibits the disclosure of information relating to a manufacturing process or trade secret which was obtained during the exercise of powers of entry under the Act.

During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Building Societies Act 1986, section 53A

This section provides that information received by the Financial Services Authority relating to the business or other affairs of any building society, or relating to any person who is, has been, or is appointed to be an officer of a building society shall be 'confidential information' for the purposes of sections 348 to 352 of the Financial Services and Markets Act 2000. This section applies the prohibition on disclosure contained within section 348 of that Act (below), and will be retained for the same reasons.

Census Act 1920, section 8

This provision makes it an offence for the Registrar-General for England and Wales (or the Registrar-General for Scotland) or any of their staff to disclose information which has been gathered in the course of the decennial census of population. It is government policy that this information, which is gathered under compulsion, should be released at the National Archives after 100 years and not before. Recent census forms have given an undertaking not to release the information any earlier. This provision will therefore be retained.

Chemical Weapons Act 1996, section 32

This item stems from the International Convention on the Prohibition of Chemical Weapons. It protects information relating to a particular business or activity carried out by an individual which has been gathered under, or relates to anything done under the Act or the Convention.

Civil Aviation Act 1982, section 23

Section 23 provides that the Civil Aviation Authority shall not release information about any particular person which has been furnished to them in accordance with a requirement of a relevant section of the Act, or an Air Navigation Order, without the consent of the information provider. In addition, the CAA may release the information if, after consulting with the person concerned, it determines that the information may be disclosed or that the person is dead or, if the person is a company, that the company has ceased to exist, or is untraceable.

The Air Navigation Order 2000 imposes a Mandatory Occurrence Reporting Scheme, implementing an obligation contained in Annex 13 to the Convention on International Civil Aviation.

The Civil Aviation Authority Regulations 1991 require the Civil Aviation Authority to make their reports on 'reportable occurrences' available for inspection to a wide group of people. This group includes operators and manufacturers of aircraft, journalists, academics and other researchers working on civil aviation – subject to the restrictions on disclosing information about individuals imposed by s.23 of the 1982 Act.

This prohibition applies to a limited class of information, and a partial access regime exists. It exists only for the lifetime of the person to whom the information relates, and provides for disclosure when that cannot be determined. It will be retained.

Child Support Act 1991, section 50

This section prohibits disclosure of information relating to individuals by any person who is or has been employed as a child support officer, or in connection with the child support tribunals, or in carrying out any functions under the Act. The offence does not apply to disclosures made in summary or anonymous form where individuals cannot be identified, or to disclosures made with 'lawful authority'. It also does not prohibit the disclosure of information which has already been made public with lawful authority.

The Government believes that this provision is compatible with Freedom of Information rights of access, since each request for information under the Freedom of Information Act must be considered on its merits. If, after consideration of the request and any appropriate exemptions, the public interest lies in disclosure of the information requested, lawful authority to make the disclosure can be sought under section 50 of the 1991 Act, thus disengaging the prohibition on disclosure.

The Government does not believe that an automatic sunset clause would be appropriate, since the age of the information will be one of the factors to be taken into account when considering the Freedom of Information Act exemptions, the public interest in release of the information and the decision whether to grant lawful authority to its release.

Data Protection Act 1998, section 59

This section arises from Directive 95/46/EC on the protection of individuals with regard to the processing of personal data, and the free movement of such data. Article 28.7 of the Directive requires Member States to provide that members and staff of the supervisory authority are subject to a duty of professional secrecy with regard to confidential information to which they have access. This item therefore fulfils an international obligation and will be retained.

Deep Sea Mining (Temporary Provisions) Act 1981, section 13

This item arises from the UN Convention on the Law of the Sea International Sea Bed Mining Code. It makes it an offence for anyone who has obtained information under this Act to disclose it to anyone else if that information relates to another person. Disclosure 'gateways' are provided, permitting disclosure with the written consent of the person to whom the information relates, or for certain specified purposes.

European Communities Act 1972, section 11

This item makes it an offence to disclose classified information obtained through employment by, or service to, a Euratom institution or installation, It implements the non-disclosure provisions of the Euratom Treaty of 25 March 1957.

Finance Act 1989, section 182

This section prohibits the disclosure of information relating to ‘identifiable persons’ which has been obtained in the exercise of various tax and social security functions. It also applies to persons to whom this information has been transferred, such as the General and Special Commissioners for Income Tax, the National Audit Office and the Parliamentary Commissioner for Administration. Since the coming into force of the Commissioners for Revenue and Customs Act 2005, this provision has largely been superseded by section 18 of that Act insofar as it applies to staff and officers of Her Majesty’s Revenue and Customs (previously Her Majesty’s Customs and Excise and the Inland Revenue).

Section 182 of the 1989 Act permits the disclosure of information with lawful authority. For the same reasons given in relation to section 50 of the Child Support Act 1991 (above), and in order to maintain consistency with the provisions of the Commissioners for Revenue and Customs Act 2005, which is outside the scope of the section 75 power, this provision will be retained.

Financial Services and Markets Act 2000, section 348

This item prohibits the disclosure of ‘confidential information’ relating to any identifiable individual. ‘Confidential information’ is information relating to the business or other affairs of any person.

It implements various international obligations of confidentiality including:

- *Investment Services Directive, article 25 (Directive 93/22/EEC, now replaced by Article 54 of Directive 2004/39/EC);*
- *Directive 2000/12/EC, article 30 (relating to the taking up and pursuit of the business of credit institutions);*
- *Directive 92/96/EC (3rd Life Assurance Directive), article 15;*
- *Directive 1992/49/EEC (3rd Non-Life Insurance Directive), article 16;*
- *Directive 79/279/EEC, article 19 (co-ordinating the conditions for the admission of securities to official stock exchange listings); and*
- *Directive 85/611/EEC, article 50 (co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities).*

Because this provision implements international confidentiality obligations, it will be retained.

Food Safety Act 1990, section 32(7)

Food Standards Act 1999, section 11(7)

Food Standards Act 1999, section 14(8)

These sections provide for 'authorised officers' to enter premises in order to carry out inspections, observation or monitoring. The subsections listed prohibit any person who enters premises in this way from disclosing, other than in the performance of their duty, information with regards to any trade secret which they obtained on the premises.

The UK is obliged by European law (Article 9 of Regulation (EC) No. 178/2002) to carry out a consultation before amending food law.

The Food Standards Agency will initiate a stakeholder consultation during 2005 on proposals to amend these prohibitions with a view to aligning them more closely with the Freedom of Information Act regime. These provisions will therefore be retained pending the outcome of the consultation.

Friendly Societies Act 1992, section 63A

This section provides that information received by the Financial Services Authority for purposes connected with this Act or the Friendly Societies Act 1974, and relating to the business or other affairs of any friendly society shall be 'confidential information' for the purposes of sections 348 to 352 of the Financial Services and Markets Act 2000. This section applies the prohibition on disclosure contained within section 348 of that Act (above), and will be retained for the same reasons.

Health Service Commissioners Act 1993, section 15

This section prohibits the Commissioners or their officers from disclosing information obtained during the course of an investigation, other than in a report of the investigation, or for the purposes of proceedings under the Official Secrets Act 1989 or in connection with the prosecution of other offences. The Government will consider whether any form of sunset clause may be appropriate to prevent this prohibition applying in perpetuity.

Local Government (Miscellaneous Provisions) Act 1976, section 15

This section permits officers of a local authority to survey and enter onto land which they propose to acquire using compulsory purchase powers. Subsection (8) prohibits persons who have entered onto land in this way from disclosing any information obtained there about trade secrets or manufacturing processes, unless the disclosure is made in the performance of their duty.

This section will be retained as it protects information which has been obtained under compulsion. However, the prohibition lasts only for as long as the information remains a trade secret, and thus will lapse automatically in respect of information which ceases to be a trade secret. Furthermore, some of the information to which this provision applies may be "environmental information", which would not be exempt from disclosure by virtue of section 44(1)(a) of the Freedom of Information Act. During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Local Government Act 1974, section 32

This section prohibits the disclosure of information obtained by the Local Government Commissioners or their staff in the course of, or for the purposes of any investigation. The information may only be disclosed for the purposes of the investigation and any report thereof. The Government will consider whether any form of sunset clause might be appropriate in relation to this information.

Local Government Finance Act 1992, section 21

This section permits the Commissioners of the Inland Revenue to appoint persons other than Crown servants to assist them in the preparation of valuations for the purposes of lists used for council tax purposes. The Valuation Office Agency, an executive agency of Her Majesty's Revenue and Customs, now carries out the majority of this work. Subsection (4) permits the Commissioners to disclose to those appointed specified information necessary to prepare valuations, and subsection (5) makes it an offence for anyone to whom information is disclosed in this way to use or disclose it for any purpose other than the valuations.

During 2005, the Government will continue to consider whether any amendment might be appropriate to bring this provision more closely into line with the Freedom of Information Act.

Local Government, Planning and Land Act 1980, section 167

These sections permit officers of a local authority and officers of an Urban Development Corporation and the Valuation Office Agency to survey and enter onto land which they propose to acquire using compulsory purchase powers. Subsection (11) prohibits persons who have entered onto land in this way from disclosing any information obtained there about trade secrets or manufacturing processes, unless the disclosure is made in the performance of their duty.

This section will be retained as it protects information which has been obtained under compulsion. However, the prohibition lasts only for as long as the information remains a trade secret, and thus will lapse automatically in respect of information which ceases to be a trade secret. Furthermore, some of the information to which these provisions apply may be "environmental information", which would not be exempt from disclosure by virtue of section 44(1)(a) of the Freedom of Information Act. During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

London Building Acts (Amendment) Act 1939, section 142

This section provides for the superintending architect, the district surveyor or any other authorised officer of the London County Council to enter onto premises to inspect and examine land, premises, buildings, structures or works which he believes are affected by the London Building Acts 1930 and 1935. Subsection (5) prohibits any person who has been admitted into a factory or workplace under this section from disclosing information relating to manufacturing processes or trade secrets.

During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

London County Council (General Powers) Act 1949, section 35

As with the London Building Acts (Amendment) Act above, this section provides for authorised officers of a heating authority to enter any premises to which the heating authority are supplying or have agreed to supply heat under this Act. (Powers and functions of heating authorities have now been transferred to London Borough Councils.) Inspectors have powers to examine any apparatus installed for the purposes of supplying heat, ensure compliance with the Act and carry out any necessary works. Subsection (3) prohibits any person who has entered a factory or workplace in this way from disclosing information relating to manufacturing processes or trade secrets.

During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

London County Council (General Powers) Act 1957, section 58

This section provides for any authorised officer of the Council to enter premises under warrant. (This power is now exercised by London Borough Councils.) Subsection (8) prohibits any person who has entered a factory or workplace in this way from disclosing information relating to manufacturing processes or trade secrets.

During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Merchant Shipping (Liner Conferences) Act 1982, section 10

This item relates to the protection of information obtained by the Secretary of State as the 'appropriate authority' for the purposes of the Convention on a Code of Conduct for Liner Conferences. The information may not be disclosed except for the purposes of discharging his functions, in relation to criminal proceedings, or in pursuance of an EC obligation. The Act implements this UN Convention, and this provision will therefore be retained.

Merchant Shipping Act 1995, section 21

This section expressly overrides any existing statutory or other prohibitions on disclosure which might prevent various named government departments from disclosing information to the Secretary of State in connection with his functions relating to the registration of British shipping. The information may also be disclosed by those government departments to the Registrar General of Shipping and Seamen, or to an authorised officer of the Secretary of State.

Subsection (3) makes it an offence for any person to whom information has been supplied under this section to disclose that information, other than to any other person to whom the information could have been disclosed by virtue of this section.

During 2005, the Government will consider whether any amendment or time limit might be appropriate in relation to this information.

Merchant Shipping Act 1995, section 174

This item contributes to the implementation of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992. This item gives the Secretary of State powers to require any person engaged in producing, treating, distributing or transporting oil to provide such information as may be necessary to establish whether they are liable to make contributions to the Fund.

Subsection (5) makes it an offence for any person to disclose information which has been obtained under this section without the consent of the person who supplied it. This item will be retained.

National Savings Bank Act 1971, section 12

This section requires that persons working for the National Savings Bank who are engaged in the receipt or payment of deposits shall not disclose the names or amounts deposited or withdrawn by any depositor. The prohibition also applies to anyone to whom the information is disclosed for any 'permitted purpose'. The Government believes that this provision is justified to protect the interests of depositors.

Naval Discipline Act 1957, section 3

This item makes it an offence to disclose intelligence information to an enemy. It is specific to people subject to the Act (broadly, anyone in, or working for, the Royal Navy), and only prohibits the supply of information to 'the enemy'. The bar is specific, and time-limited (because it only applies for as long as the potential recipient of the information is 'an enemy'). It will therefore be retained unchanged.

Naval Discipline Act 1957, section 34

This item prohibits the disclosure by any person subject to naval law of any information which would, or might, be useful to an enemy. The item is specific and time-limited (because it only applies for as long as the potential recipient of the information is 'an enemy'). It will be retained for the same reasons as set out above in relation to section 3 of this Act.

Nuclear Safeguards Act 2000, section 6

This item arises from the Protocol Additional to the UK/Euratom/IAEA Safeguards Agreement (the Nuclear Non-Proliferation Treaty), and prohibits disclosure of information relating to a business or other activity carried on by any person. This prohibition is subject to a number of exemptions relating to consent, criminal investigations, public safety etc. This item will be retained.

Official Secrets Act 1989, sections 1-6

This Act prohibits the disclosure of information without 'lawful authority' if the release of the information would be damaging to national security, international relations etc. The prohibition is specific to 'damaging' disclosures, and relates only to circumstances where no lawful authority has been given for the disclosure. It will be retained.

Parliamentary Commissioner Act 1967, section 11(2)

This section prohibits the disclosure of information obtained by the Parliamentary Ombudsman or her staff in the course of, or for the purposes of any investigation. The information may only be disclosed for the purposes of the investigation and any report thereof, and for various legal proceedings. The Government will consider whether any form of sunset clause might be appropriate in relation to this information.

Patents Act 1977, section 22

This section enables the comptroller of the Patent Office to issue directions prohibiting or restricting the disclosure of information if it appears to him that such publication might be prejudicial to national security or public safety. Once the comptroller has issued directions, subsection (9) makes it an offence to fail to comply with the directions.

This section also requires the comptroller to notify the Secretary of State of any directions he has given. The Secretary of State then has to consider whether the disclosure of the information in question would actually be prejudicial to national security or public safety. If he believes that it would be, he may notify the comptroller that the directions should continue. The Secretary of State must then review the directions within 9 months, and at least once in every subsequent year to consider whether they are still necessary.

If the Secretary of State considers that the disclosure would not be prejudicial or that the directions are no longer needed, he must notify the comptroller, who must then revoke the directions.

This provision is specific in the information to which it applies, and a limited access regime exists via the Secretary of State's review. Because the prohibition is time-limited, no sunset clause is needed.

Patents Act 1977, section 118(2)

Section 16 of this Act requires that, once an application for a patent has been made, the documents or information relating to that application must be published by the Patent Office as soon as possible after the prescribed period. Subsection (2) of section 118 provides that until the end of the prescribed period, the documents and information shall not be open to inspection. The prescribed period is currently set at eighteen months by the Patents Rules 1995⁴ (as amended), and this period is accepted as an international standard in patent law.

The prohibition is specific in the information to which it applies, and almost total access is given after the expiry of the 18-month period. Because the bar on disclosure is already time-limited in this way, no amendment is necessary for Freedom of Information Act purposes.

⁴ SI 1995/2093

Petroleum Act 1998, section 17E

Petroleum Act 1998, section 17G

These sections implement the confidentiality requirements of Directive 98/30/EC concerning common rules for the internal market in natural gas.

They enable the Director of OFGEM to require businesses to supply him with information. Subsection (3) provides that the Director must not disclose the information supplied in this way without the consent of the person who supplied it. He may disclose the information if required to do so by or under any other enactment. (The Freedom of Information Act does not require the disclosure of this information, because it expressly does not override pre-existing statutory bars on disclosure.)

This section implements an international obligation, and will therefore be retained unchanged.

Pipe-lines Act 1962, section 10F

This section also implements the confidentiality requirement of Directive 98/30/EC concerning common rules for the internal market in natural gas (see Petroleum Act provisions above).

This section enables the Secretary of State to require businesses to disclose to him certain information, and prevent him from further disclosing the information supplied unless he has the consent of the supplier. He may disclose the information if required to do so by or under any other enactment. (The Freedom of Information Act does not require the disclosure of this information, because it expressly does not override pre-existing statutory bars on disclosure.)

This section implements an international obligation, and will therefore be retained unchanged.

Planning (Hazardous Substances) Act 1990, section 36B

Sections 36 and 36A provide for persons to enter onto land for the purposes of surveying it in connection with any application to handle hazardous substances, or any contravention of the Act. Section 36B makes it an offence for any person who has entered onto land in this way to disclose information relating to trade secrets or manufacturing processes which he obtained there. Disclosure is not permitted in any circumstances.

This section will be retained as it protects information which has been obtained under compulsion. However, the prohibition lasts only for as long as the information remains a trade secret, and thus will lapse automatically in respect of information which no longer needs to be kept secret. Furthermore, some of the information to which these provisions apply may be “environmental information”, which would not be exempt from disclosure by virtue of section 44(1)(a) of the Freedom of Information Act. During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Police Act 1997, section 124

This section makes it an offence for anyone who has obtained details of a person's criminal record under sections 113 or 115 of this Act to disclose that information.

Certain employers and other organisations may register under section 120 of the Police Act as needing to engage people to work with, or to adopt, or foster children. These organisations may apply to the Secretary of State under section 113 for details of a prospective employee's, worker's, or parent's criminal record. In some circumstances, they may also need to know details of a person's spent convictions.

Where these details are supplied to them, section 124 prohibits the onward disclosure of this information.

This section applies equally to employers and organisations in the private and public sectors. It would not be appropriate for different disclosure provisions to be applied to this sensitive information simply because a person was working for a public authority, and therefore this provision will be retained unchanged. A sunset clause would be inappropriate for the same reasons.

Police (Northern Ireland) Act 1998, section 63

This section prohibits the disclosure of information by the Police Ombudsman for Northern Ireland or his staff. Information may only be disclosed for various functions of the Ombudsman; for the purposes of any criminal, civil or disciplinary proceedings; or in anonymous or summary form which does not identify the person who supplied the information or (unless in the public interest to do so) the person to whom it relates.

This section does not prevent the Ombudsman from disclosing information about identifiable individuals in reports of his investigations where he thinks it is necessary in the public interest to do so.

Because of the enduring sensitivity of the information to which this provision applies, it will be retained.

Population (Statistics) Act 1938, section 4

This provision makes it an offence for anyone to disclose information about a particular person which has been obtained under this Act. Disclosure is only permitted in the performance of functions under this Act, or by the Registrar-General in accordance with section 5 of the Census Act 1920.

During 2005, the Government will consider whether any form of amendment might be appropriate to bring this section into line with the Freedom of Information Act.

Radioactive Material (Road Transport) Act 1991, section 5

This section permits inspectors and examiners to enter onto premises or into vehicles in order to check whether they meet the requirements set out in the Radioactive Material (Road Transport) Regulations 2002 (as amended), or the safety of any radioactive material cargo.

Subsection (6) makes it an offence for anyone who has entered premises or vehicles in this way to disclose information relating to trade secrets or manufacturing processes which they found there.

During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Radioactive Substances Act 1993, section 34

This section prohibits the disclosure of information relating to manufacturing processes and trade secrets which has been obtained under this Act. This section has wide application to information from many different sources, and will include information held for defence purposes (such as that relating to nuclear weapons and propulsion systems) as well as other information relating to civilian uses of radioactive materials (such as the generation of nuclear power, and the use of radioactive materials in hospitals). The UK is under various international obligations to control access to information on the military uses of radioactive material, including the Nuclear Non-Proliferation Treaty and bilateral agreements with the United States.

Because of the wide application of this provision, a simple sunset clause may not be appropriate, because the sensitivity of the information will change at different rates. The Government is considering (in consultation with stakeholders) whether another form of amendment or time limit may be appropriate.

Railways Act 1993, section 145

This prohibition prevents the disclosure of information relating to any particular business or individual which has been supplied to the Office of Rail Regulation in its capacity as regulator of the privatised rail industry. This prohibition lasts for the lifetime of the individual, or for so long as the business continues to be carried on. This information may only be disclosed with the consent of the supplier, or to specified people/organisations for the purposes of their functions under specified enactments (not including the Freedom of Information Act). Finally, the information may be disclosed for the purposes of investigation and prosecution of criminal offences, for the bringing of civil proceedings under various statutory powers, or in pursuance of a European Community obligation.

The Office of Rail Regulation can use its powers under the Railways Act 1993 and the Railways Act 2005 to compel businesses to supply them with this information.

Registered Designs Act 1949, section 22

This section provides for the inspection of registered designs at the Patent Office. Where an application to register a design is received, and the design is intended to be applied to a 'specified product', that design shall not be open to inspection for a defined period following the registration of the design. The specified products and periods are set out in the Registered Design Rules 1995⁵ (as amended). These currently specify a period of 3 years for designs to be applied to textiles, and 2 years for designs to be used in wallpaper (or other wall coverings) or lace.

Subsection (4) provides that information relating to applications which have been abandoned or refused by the Patent Office shall never be open to inspection. However, this information is only retained by the Patent Office for 5 years, to ensure that any appeals or petitions to re-instate the application are cleared. After this time, the information is destroyed.

These prohibitions are limited in the information to which they apply, and a partial access regime exists to information about successful design applications. They will therefore be retained unchanged. Because of the time-limited nature of the bars (either through subsequent publication or destruction of the information) a sunset clause would not be appropriate.

Regulation of Investigatory Powers Act 2000, section 19

This section requires that, where an interception warrant has been issued, persons to whom the section applies have a duty to keep knowledge of the details of the warrant secret. Interception warrants are issued by the Secretary of State and permit interception of a person's mail or telephone calls, for the purposes of preventing or detecting serious crime, safeguarding the economic well-being of the UK, or in the interests of national security. Failure to keep this information secret is a criminal offence, unless a person can show that he could not have prevented the disclosure, or that the disclosure was specifically authorised.

Section 19 specifies the information about the warrant to which it applies. The prohibition applies equally to public authorities and other organisations which are not subject to the Freedom of Information Act. It would be impractical and inappropriate to have separate rules on disclosure applying only to public authorities. This provision will be retained.

Regulation of Investigatory Powers Act 2000, section 54

This section makes it an offence for anyone who has been given a notice requiring them to keep certain information secret to disclose that information. The offence also applies to anyone who becomes aware of the existence and contents of a notice. The prohibition applies to information about the existence of the notice, its contents and the things done in pursuance of it.

⁵ SI 1995/2912

The prohibition applies equally to public authorities and other organisations which are not subject to Freedom of Information. Again, it would be impractical and inappropriate to have different rules on disclosure applying only to public authorities. This provision will be retained.

Rehabilitation of Offenders Act 1974, section 9

This section prohibits the disclosure of information about an individual's spent convictions by any person who has had access to such records. Breach of the prohibition is a criminal offence. This provision is limited in the information to which it applies and the fact that the prohibition is limited to the lifetime of the individual(s) concerned means that it is time-limited. This provision will be retained.

Road Traffic Regulation Act 1984, section 43

This section permits officers of the local authority to enter premises which are being operated under licence as off-street parking places. Subsection (5) makes it an offence for any person who has entered premises (or inspected documents) under this section to disclose any information relating to a trade secret or the operation of the parking place. The prohibition also applies to anyone to whom this information has been disclosed in the course of the local authority officers' duty.

During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Sexual Offences (Amendment) Act 1992, section 1

This section prohibits the disclosure of the identity of victims and alleged perpetrators of sexual offences during their lifetimes.

Because of the extreme sensitivity of the information, and the fact that the prohibition is limited to the lifetime of the individual(s) concerned, this provision will be retained.

Social Security Administration Act 1992, section 123

This section prohibits persons who are or have been employed in the administration of social security from disclosing information about individuals which they acquired in the course of their employment, unless they make the disclosure with lawful authority.

It does not prohibit the disclosure of information in a suitably anonymous form such that individuals cannot be identified from it, nor does it prohibit disclosure of information which has already been disclosed with lawful authority.

This section replicates section 50 of the Child Support Act 1991 above and will be retained for the same reasons.

Statistics of Trade Act 1947, section 9

This section prohibits the disclosure of individual returns or information relating to any individual business or undertaking which has been obtained under the powers in this Act to compel disclosure of information. This section also requires that information is not disclosed in a form which could lead to individual businesses being identified.

The prohibition is limited in the class of information to which it applies, and a partial access regime exists to information which does not identify individual returns or businesses. This prohibition will be retained.

Statutory Water Companies Act 1991, section 16

This section applies the prohibition on disclosure in section 206 of the Water Industry Act 1991 (below) to the provisions of this Act. It will be retained for the same reasons.

Telecommunications Act 1984, section 94

This section permits the Secretary of State to give directions to operators of public electronic communications networks and to the Office of Communications (OFCOM) in the interests of national security or international relations. These directions may be general, or may specifically require organisations to take, or refrain from taking, particular actions. Copies of these directions must be laid before both Houses of Parliament unless to do so would be contrary to the interests of national security. The Secretary of State may also give notifications that in his opinion, disclosure of things done by virtue of this section would be contrary to the interests of national security.

The Secretary of State has the power to review directions and notifications issued under this section, and to modify or withdraw them if they are no longer necessary. This provision is limited in the information to which it applies, and as the Secretary of State retains the power to review and modify or withdraw directions and notifications, someone wishing access to this information could ask the Secretary of State to reconsider his direction or notification. This provision will therefore be retained.

Telecommunications Act 1984, section 101

This prohibition prevents the disclosure of information relating to any particular business or individual which has been supplied to the Office of Communications (OFCOM) in its capacity as regulator of the telecommunications industry. This prohibition lasts for the lifetime of the individual, or for so long as the business continues to be carried on. This information may only be disclosed with the consent of the supplier, or to specified people/organisations for the purposes of their functions under specified enactments (not including the Freedom of Information Act). Finally, the information may be disclosed for the purposes of investigation and prosecution of criminal offences, for the bringing of civil proceedings under various statutory powers, or in pursuance of a European Community obligation.

OFCOM can use its powers under the Telecommunications Act 1984, and the Communications Act 2003 to compel businesses to supply them with this information.

Town and Country Planning Act 1990, section 325

Section 324 provides for persons to enter onto land to carry out various surveys. Section 325 makes it an offence for them to disclose information relating to trade secrets and manufacturing processes which they find there.

This section will be retained as it protects information which has been obtained under compulsion. However, the prohibition lasts only for as long as the information remains a trade secret, and thus will lapse automatically in respect of information which no longer needs to be kept secret. Furthermore, some of the information to which these provisions apply may be “environmental information”, which would not be exempt from disclosure by virtue of section 44(1)(a) of the Freedom of Information Act. During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Town and Country Planning Act 1990, schedule 15 paragraph 14

This section prohibits the disclosure of information relating to trade secrets or manufacturing processes which has been obtained by officials inspecting land to ascertain whether war-time breaches of planning control have been committed.

This section will be retained as it protects information which has been obtained under compulsion. However, the prohibition lasts only for as long as the information remains a trade secret, and thus will lapse automatically in respect of information which no longer needs to be kept secret. Furthermore, some of the information to which these provisions apply may be “environmental information”, which would not be exempt from disclosure by virtue of section 44(1)(a) of the Freedom of Information Act. During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Utilities Act 2000, section 105

This prohibition prevents the disclosure of information relating to any particular business or individual which has been supplied to OFGEM in its capacity as regulator of the privatised gas and electricity industries. This prohibition lasts for the lifetime of the individual, or for so long as the business continues to be carried on. This information may only be disclosed with the consent of the supplier, or to specified people/organisations for the purposes of their functions under specified enactments (not including the Freedom of Information Act). Finally, the information may be disclosed for the purposes of investigation and prosecution of criminal offences, for the bringing of civil proceedings under various statutory powers, or in pursuance of a European Community obligation.

OFGEM can use its powers under the Utilities Act 2000 to compel businesses to supply them with this information.

Water Industry Act 1991, section 206

This prohibition prevents the disclosure of information relating to any particular business or individual which has been supplied to the Office of Water Services (OFWAT) in its capacity as regulator of the privatised water

industry. This prohibition lasts for the lifetime of the individual, or for so long as the business continues to be carried on. This information may only be disclosed with the consent of the supplier, or to specified people/organisations for the purposes of their functions under specified enactments (not including the Freedom of Information Act). Finally, the information may be disclosed for the purposes of investigation and prosecution of criminal offences, for the bringing of civil proceedings under various statutory powers, or in pursuance of a European Community obligation.

OFWAT can use its powers under the Water Industry Act 1991 to compel businesses to supply them with this information.

Water Industry Act 1991, section 208

This section permits the Secretary of State to give directions to water suppliers and others in the interests of national security, or to mitigate the effects of any civil emergency. It applies in the same way as section 94 of the Telecommunications Act 1984 above, and will be retained for the same reasons.

Water Resources Act 1991, section 207

This section permits the Secretary of State to give directions to the Environment Agency in the interests of national security, or to mitigate the effects of any civil emergency. It applies in the same way as section 94 of the Telecommunications Act 1984 above, and will be retained for the same reasons.

Weights and Measures Act 1985, section 64

This section prohibits the disclosure of information relating to trade secrets or manufacturing processes which has been obtained by inspectors or those accompanying them when carrying out their functions under Part V of the Act.

Inspectors have wide-ranging powers to compel admittance onto premises and the production of information and documents. The prohibition relates only to 'trade secrets' and 'secret manufacturing processes' and therefore does not apply if the person from whom the information was obtained consents to its disclosure. The prohibition already takes account of the diminishing sensitivity of information, since it only applies for as long as the information needs to remain 'secret'. This provision protects information obtained under compulsion, and will be retained.

Weights and Measures Act 1985, section 79

This section prohibits the disclosure of information relating to trade secrets and manufacturing processes which has been obtained during the exercise of powers of entry into workplaces.

This section enables inspectors to compel admittance onto premises and the production of information and documents. The prohibition relates only to 'trade secrets' and therefore does not apply if the person from whom the information was obtained consents to its disclosure. The prohibition already takes account of the diminishing sensitivity of information, since it only applies for as long as the information needs to remain 'secret'. This provision protects information obtained under compulsion, and will be retained.

Wireless Telegraphy Act 1949, section 5

This section arises from the Radio Regulations annexed to the International Telecommunications Convention. It prohibits the disclosure of information relating to the sender, contents or addressee of any message where that information has only come to a person's knowledge through use of wireless telegraphy apparatus. 'Designated persons' (such as the Secretary of State, Commissioners of Customs and Excise, members of the Scottish Executive or other persons designated by Order) may give specific authority to make such disclosures. This authority may only be given if the designated person believes that it is necessary in the interests of national security, public safety, or on other grounds specified in subsection (4).

Because this prohibition implements an international obligation, it will be retained unchanged.

Secondary Legislation

Abortion Regulations 1991, regulation 5

Any medical practitioner who terminates a pregnancy is required to notify a Chief Medical Officer, including details of the woman's 'local patient identifier', date of birth, postcode, the place and date of the termination and other detailed medical information. Regulation 5 prohibits the disclosure of this information by anyone who has access to it.

This information may be disclosed to specified persons, and/or for functions specified in the regulations. It may also be disclosed for the purposes of bona fide scientific research.

Because of the extreme personal sensitivity of the information protected by this provision, it will be retained unchanged.

Adoption Agencies Regulations 1983, regulation 14

This regulation provides that information obtained, or recommendations or decisions made by virtue of these regulations must be treated by an adoption agency as confidential. Subsection (3) provides that indexes and case records (in relation to cases where an adoption order was made) shall be kept for at least 75 years. Some records may be retained for longer than this.

Access to these records may be given under regulation 15 to those persons specified in the regulation, including anyone who obtains written authority from the Secretary of State.

The prohibition applies to a limited class of information, and a partial access regime exists.

Alcoholometers and Alcohol Hydrometers (EEC Requirements) Regulations 1977, regulation 13

This regulation prohibits the disclosure of information relating to trade secrets or manufacturing processes which has been obtained by inspectors or those accompanying them when carrying out their functions under this part of the Act.

Inspectors have wide-ranging powers to compel admittance onto premises and the production of information and documents. The prohibition relates only to 'trade secrets' and 'secret manufacturing processes' and therefore does not apply if the person from whom the information was obtained consents to its disclosure. The prohibition already takes account of the diminishing sensitivity of information, since it only applies for as long as the information needs to remain 'secret'. This provision protects information obtained under compulsion, and will be retained.

Arrangements for Placement of Children (General) Regulations 1991, regulations 9(3) and 10(7)

These provisions require local authorities to keep confidential case records of children in their care. These records will include sensitive details about the children's histories, their families and the families with which they are placed.

The prohibition applies to a limited class of information, and a partial access regime exists. Because of the extreme and enduring sensitivity of the information, the Government believes that a sunset clause would not be appropriate.

Biocidal Products Regulations 2001, article 26

Biocidal Products (Northern Ireland) Regulations 2001, article 26

These provisions were passed in 2001, and are therefore outside the scope of the power in section 75 of the Freedom of Information Act. They will therefore be retained unchanged.

Calibration of Tanks of Vessels (EEC Requirements) Regulations 1975, regulation 9

This regulation prohibits the disclosure of information relating to trade secrets or manufacturing processes which has been obtained by inspectors or those accompanying them when carrying out their functions under this part of the Act.

Inspectors have wide-ranging powers to compel admittance onto premises and vessels, and to compel the production of information and documents. The prohibition relates only to 'trade secrets' and 'secret manufacturing processes' and therefore does not apply if the person from whom the information was obtained consents to its disclosure. The prohibition already takes account of the diminishing sensitivity of information, since it only applies for as long as the information needs to remain 'secret'. This provision protects information obtained under compulsion, and will be retained.

Construction Products Regulations 1991, regulation 25

This regulation prohibits the disclosure by any person of information obtained under or in relation to these regulations. The disclosure of such information is only permitted:

- for the purposes of facilitating the performance of functions under the Regulations;
- for other enforcement functions;
- for the purposes of bringing civil or criminal proceedings; or
- in pursuance of any European Community obligation.

During 2005, the Government will continue to consider whether any amendment might be appropriate to bring the provision more closely into line with the Freedom of Information Act.

Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, regulation 12

These Regulations fulfil obligations under Article 26 of the Chicago Convention to investigate air accidents and incidents. Regulation 12 provides that, before publishing a report of an inquiry (required by the Chicago Convention), the investigating Inspector shall contact any person whose reputation appears

likely to be adversely affected by the report. That person has 28 days to respond to the report. The inspector may then make such changes as he sees fit before publishing the report.

Sub-paragraph (5) prohibits the disclosure of information in a report or accompanying notice by any person who has received such things under regulation 12. Disclosure is permitted only with the prior written consent of the Chief Inspector of Air Accidents.

The prohibition is limited in the information to which it applies, and a partial access regime exists via the publication of the report. This prohibition may also apply to bodies which are not subject to the Freedom of Information Act. It will therefore be retained. The prohibition applies only to the persons on whom notices and copies of reports are served under this section: it does not apply to the same information held by the Air Accidents Investigations Branch (part of the Department for Transport). For this reason, and because the majority of information is published in the report, a sunset clause would not be appropriate.

EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001, article 29

These provisions were passed in 2001, and are therefore outside the scope of the power in section 75 of the Freedom of Information Act. They will therefore be retained unchanged.

Education (Special Needs) (England) Consolidation Regulations 2001, regulation 24

These provisions were passed in 2001, and are therefore outside the scope of the power in section 75 of the Freedom of Information Act. They will therefore be retained unchanged.

Genetically Modified Organisms (Contained Use) Regulations 2000, regulation 22

Genetically Modified Organisms (Contained Use) Regulations 2000, regulation 23

These provisions implement Article 19 of Directive 98/81/EC (amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms). They provide that persons supplying information to the competent authority may indicate that some of the information they supply should be treated as confidential. Suppliers must justify this claim. The competent authority must then decide whether it considers the information to be confidential, and communicate its decision to the supplier.

Information which the competent authority has agreed should be kept confidential (or information which a supplier has requested be treated as confidential and about which the authority has not yet made a decision) must then not be disclosed.

These provisions implement an international obligation of confidentiality and will be retained.

Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2001, regulation 22

Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2001, regulation 23

These provisions were passed in 2001, and are therefore outside the scope of the power in section 75 of the Freedom of Information Act. They will therefore be retained unchanged.

Medical Devices Regulations 2002

These provisions were passed in 2002, and are therefore outside the scope of the power in section 75 of the Freedom of Information Act. They will therefore be retained unchanged.

Measuring Container Bottles (EEC Requirements) Regulations 1977, regulation 8

Measuring Instruments (EEC Requirements) Regulations 1988, regulation 26

These regulations replicate regulation 13 of the Alcoholometers and Alcohol Hydrometers Regulations 1977 above, and will be retained for the same reasons.

National Health Service (Venereal Diseases) Regulations 1974, regulation 2; and

National Health Service Trusts and Primary Care Trusts (Sexually Transmitted Diseases) Directions 2000, paragraph 2

Both these provisions require NHS Trusts and Primary Care Trusts to take all necessary steps to ensure the non-disclosure of information with respect to persons examined or treated for any sexually transmitted disease. The 1974 Regulations also apply this same requirement to Strategic Health Authorities.

Because of the extreme personal sensitivity of the information protected by these provisions, they will be retained unchanged.

National Savings Stock Register Regulations 1976, regulation 57

This regulation prohibits anyone who is employed in connection with business arising under these Regulations from disclosing the names of stock-holders, or the amounts, descriptions or purchase prices of the stock they hold.

For the same reasons given above in relation to the National Savings Bank Act 1971, the Government does not believe that it would be appropriate to remove or amend this requirement.

Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules 1998, rule 22

This Rule requires the Sentence Review Commissioners appointed under section 1 of the Northern Ireland (Sentences) Act 1998 not to disclose information which the Secretary of State has certified as 'damaging'. The prohibition only extends to disclosure to the accused, his representatives or any witnesses appearing for him.

This prohibition is limited in the information to which it applies, and a partial access regime exists because the prohibition is limited to disclosures made to specific persons. It will be retained.

Notification of New Substances (Northern Ireland) Regulations 1994, regulation 19

These regulations implement Directive 92/32/EEC (which amends Directive 67/548/EEC). Regulation 18 provides that anyone notifying the competent authority of a new substance may indicate that he considers certain information to be commercially sensitive, and request that the competent authority keep that information secret. The competent authority must then decide whether it considers the information to be commercially sensitive and communicate its decision to the notifier.

Regulation 19 provides that the competent authority must not disclose information which it has agreed to be kept confidential, other than:

- with the consent of the notifier;
- to another competent authority or the European Commission; or
- for the purposes of legal proceedings.

This provision implements international obligations of confidentiality and will be retained.

Notification of New Substances Regulations 1993, regulation 19

This regulation mirrors in Great Britain the effect of regulation 19 of the Notification of New Substances (Northern Ireland) Regulations 1994 above, and will be retained for the same reason.

Petroleum Production (Landward Areas) Regulations 1995, schedule 3 paragraph 29

Petroleum Production (Landward Areas) Regulations 1995, schedule 4 paragraph 9

Petroleum Production (Landward Areas) Regulations 1995, schedule 5 paragraph 8

Petroleum Production (Northern Ireland) Regulations 1987, schedule 2 paragraph 24

Petroleum Production (Seaward Areas) Regulations 1988, schedule 4 paragraph 34

Petroleum Production (Seaward Areas) Regulations 1988, schedule 5 paragraph 15

These Regulations provide the forms of licences to be issued to persons wishing to prospect for petroleum products in the waters around Great Britain and Northern Ireland. The paragraphs mentioned above impose in each licence issued under the regulations a requirement on the Department for Trade and Industry not to disclose the information which is passed to it under the licences to any person not in the service or employment of the Crown.

The prohibition is actually contained in the terms of the licence. At present, this information is kept confidential for either four or five years (depending on the licence). More recent licences have only included a term of three years. After this time, the information can be released.

Because the information is supplied under compulsion (through the terms of the licence), and the prohibition does not endure in perpetuity, these regulations will be retained unchanged.

Premium Savings Bonds Regulations 1972, regulation 30

This regulation prohibits anyone who is employed in connection with business arising under these Regulations from disclosing the names of bond-holders, or the numbers of bonds held, or the amounts paid to any person in respect of a bond.

For the same reasons given above in relation to the National Savings Bank Act 1971, the Government does not believe that it would be appropriate to remove or amend this requirement.

Proceeds of Crime (Northern Ireland) Order 1996, schedule 2 paragraph 7

This paragraph prohibits financial investigators from disclosing information they obtain, other than to the police, Northern Ireland government departments or other bodies discharging functions on behalf of the Crown, any 'competent authority', or any other body outside the UK with functions similar to the UK bodies listed above.

Financial investigators are often not public authorities, although staff of the Assets Recovery Agency sometimes carry out this function. However, in order to maintain consistency with the equivalent legislation in England and Wales, (the Proceeds of Crime Act 2002, which is outside the scope of the section 75 power), this paragraph will be retained.

Public Health (Infectious Diseases) Regulations 1988, regulation 12

The Public Health (Control of Disease) Act 1984 requires medical practitioners to notify certain people when they come across cases of particular diseases. This is done by sending 'certificates' to the local authority, which give personal details of the person suffering from the disease.

Regulation 12 requires that such certificates and other accompanying or related documents shall be sent securely, and the information must not be disclosed other than for the purposes of the 1984 Act or in the interests of protecting public health.

Because of the extreme personal sensitivity of the information protected by these provisions, they will be retained unchanged.

Public Supply Contracts Regulations 1995, regulation 18

This regulation implements an obligation of confidentiality stemming from Article 15 of the EU Directive on co-ordinating procedures for the award of public supply contracts (Directive 93/36/EEC). It provides that suppliers (i.e.

persons seeking, or who have sought, to supply goods or services to the public sector) who give information to a contracting authority may request that the contracting authority treat that information as confidential. Such requests must be 'reasonable'. Regulation 18 provides that contracting authorities must comply with these requirements.

Because this provision implements an international obligation of confidentiality, it will be retained unchanged.

Rehabilitation of Offenders (Northern Ireland) Order 1978, regulation 10

This regulation replicates for Northern Ireland section 9 of the Rehabilitation of Offenders Act 1974. It will be retained for the same reasons.

Savings Certificates (Children's Bonus Bonds) Regulations 1991, regulation 28

Savings Certificates (Yearly Plan) Regulations 1984, regulation 31

These regulations prohibit anyone employed in connection with business arising under these Regulations from disclosing the names of purchasers or holders of any certificate, the numbers of certificates purchased, or the amount paid in respect of any certificate.

For the same reasons given above in relation to the National Savings Bank Act 1971, the Government does not believe that it would be appropriate to remove or amend these requirements.

Savings Contracts Regulations 1969, regulation 26

This regulation prohibits any person employed in connection with business arising under these regulations from disclosing the name of any contributor, the amount of the contributions or amount paid to any person in respect of a savings contract.

For the same reasons given above in relation to the National Savings Bank Act 1971, the Government does not believe that it would be appropriate to remove or amend these requirements.

Taximeters (EEC Requirements) Regulations 1979, regulation 15

This regulation replicates regulation 13 of the Alcoholometers and Alcohol Hydrometers (EEC Requirements) Regulations 1977 above, and will be retained for the same reasons.

Utilities Contracts Regulations 1996, regulation 30

This regulation permits utilities making information available under the regulations to providers to impose requirements upon them to protect the confidentiality of that information.

These regulations implement Directive 93/38/EEC and will be retained.

Chapter 5: Other provisions reviewed

Explanatory

During the course of this review, the scope of the power in section 75 and the interaction between each provision reviewed and the Freedom of Information Act access regime has been carefully considered.

As set out in the Introduction to this report, it is a corollary of the power in section 75 of the Freedom of Information Act that the provision is capable of engaging the exemption in section 44(1)(a) of the Act. Those provisions which are not capable of engaging that exemption are also clearly not eligible to be changed using the section 75 power.

Many of the provisions listed as being subject to this review in previous interim reports fall within this category. They fall broadly into four types:

- Provisions which have already been repealed, revoked or amended such that they no longer contain bars to disclosure;
- Provisions conferring a power to make secondary legislation or other instruments containing prohibitions on disclosure;
- Prohibitions applying only to bodies, persons or organisations not covered by the Freedom of Information regime;
- Discretionary or contextual restrictions on disclosure.

A final group of provisions does not fall into any of these categories. This includes provisions giving effect to Schedules which themselves contain bars on disclosure, provisions relating to the proceedings of courts martial, and provisions providing the penalties for breaching prohibitions found elsewhere. As with those provisions falling into the four categories above, the Government believes in each case that these provisions are not in themselves capable of giving rise to the exemption in s.44(1)(a) of the Freedom of Information Act.

Provisions wholly or partially repealed or revoked

Provisions no longer in force are clearly not capable of prohibiting the disclosure of information in response to a Freedom of Information request. They have therefore not been further considered in this review, and the Government takes no view on whether or not they previously constituted prohibitions on disclosure.

The items listed as partially repealed or revoked previously contained provisions dealing with the disclosure of information. However, the Government again takes no view on whether these provisions themselves constituted bars to disclosure.

A sub-category of this category is those provisions where the Government has already stated its intention to repeal or otherwise remove the prohibition. In most cases, the repeal has already been enacted, but is not yet in force. As a matter of legislative practice, it is not possible to further amend or repeal a provision after its initial repeal has already been enacted, and therefore these provisions have not been considered further during this review.

Provisions conferring a power to make secondary legislation or other instruments containing prohibitions on disclosure

These items are not in themselves prohibitions on disclosure, and cannot therefore fall within the section 75 power. Instruments made under them which contain prohibitions on disclosure may come within the scope of the power if they meet the other necessary criteria, such as date of making, application to public authorities etc.

Provisions applying only to bodies, persons or organisations not covered by the FOI Act

Section 75 requires that the enactment must prohibit the disclosure of information held by a public authority. Prohibitions on disclosure which do not apply to any public authorities cannot prevent the disclosure of information in response to Freedom of Information requests, and cannot fall within the scope of the section 75 power. These provisions, which appeared in earlier reports on the review, are included in this report for completeness.

Discretionary or contextual restrictions on disclosure

The majority of provisions still in force that have been considered in this review and deemed not to fall within the section 75 power fall into this category. Of these, most relate to the disclosure or publication of information in statutory reports, requiring that those publishing the report 'have regard to the need for excluding' certain information from the published report to protect interests such as the privacy of individuals, national security and commercial sensitivity. This type of provision is both discretionary (since one can still publish the information having had regard to the need for excluding it), and contextual (since it applies only to the inclusion of information in the report, not disclosure more generally).

Other provisions of this type place limitations on the disclosure of information under specific access regimes or disclosure requirements. These prohibitions apply only in that context.

Finally, a number of these provisions set out requirements and arrangements for the publication or disclosure of information in certain circumstances, but do not place limits or prohibitions on the disclosure of that information.

Primary Legislation

Provisions wholly repealed

Broadcasting Act 1990, section 197
 Company Securities (Insider Dealing) Act 1985, sections 1, 2, 4 and 5
 Control of Pollution Act 1974, section 81
 Electricity Act 1989, sections 50 and 52
 Electronic Communications Act 2000, section 4
 Energy Conservation Act 1981, section 20
 Fire Precautions Act 1971, section 21
 Food Safety Act 1990, section 25
 Gas Act 1986, sections 39 and 41
 Immigration and Asylum Act 1999, schedule 4 paragraph 9
 Legal Aid Act 1988, section 38
 Local Government Finance Act 1982, section 30
 Local Government, Planning and Land Act 1980, schedule 20 paragraph 16
 National Health Service Act 1977, schedule 13
 Restrictive Trade Practices Act 1976, section 23
 Sexual Offences (Amendment) Act 1976, section 4
 Telecommunications Act 1984, sections 27C and 48
 Water Industry Act 1991, section 193

Provisions partially repealed

British Nationality (Hong Kong) Act 1990, section 1
 British Nationality Act 1981, section 44
 Electricity Act 1989, section 42
 Gas Act 1986, section 33C
 Nuclear Installations Act 1965, section 22

Provisions to be repealed by other means

Adoption Act 1976, sections 50 and 51A (*Adoption and Children Act 2002*)
 Anatomy Act 1984, section 10 (*Human Tissue Act 2004*)
 Betting, Gaming and Lotteries Act 1963, section 28 (*Gambling Act 2005*)
 Coal Industry Nationalisation Act 1946, section 56 (*Coal Industry Act 1994*)
 Mental Health Act 1983, section 103 (*Mental Capacity Act 2005*)
 Pensions Act 1995, section 104 (*Pensions Act 2004*)
 Petroleum Act 1998, section 17B (*Energy Act 2004*)
 Pipe-lines Act 1962, section 10B (*Energy Act 2004*)
 Sex Discrimination Act 1975, section 61 (*Equality Bill*)
 Telecommunications Act 1984, section 55 (*Communications Act 2003*)
 Water Industry Act 1991, section 194 (*Water Act 2003*)

Other provisions considered not to be bars to disclosure under the FOI Act

Powers to make enactments containing prohibitions on disclosure

Abortion Act 1967, section 2
 Education Act 1996, schedule 27 paragraph 7
 Environmental Protection Act 1990, section 142

Food and Environment Protection Act 1985, section 16
Pension Schemes Act 1993, section 149
Vehicle Excise and Registration Act 1994, section 22

Provisions applying only to bodies not covered by the Freedom of Information Act 2000

Intelligence Services Act 1994, sections 2, 4, 5, 7 and 10
Lloyd's Act 1982, schedule 2 paragraph 25
Iron and Steel Act 1982, section 33
Offshore Safety Act 1992, section 5
Planning (Hazardous Substances) Act 1990, schedule paragraph 6
Planning (Listed Buildings and Conservation Areas) Act 1990, schedule 3 paragraph 6
Security Services Act 1989, section 2
Town and Country Planning Act 1990, sections 196 and 321

Discretionary or contextual restrictions

Access to Medical reports Act 1988, sections 4, 5 and 7
Agricultural Marketing Act 1958, section 47(1)
Air Force Act 1955, section 141
Army Act 1955, section 141
Atomic Energy Authority Act 1954, section 3
Broadcasting Act 1996, section 119
Competition Act 1980, section 17
Control of Pollution Act 1974, sections 42A and 42B
Electricity Act 1989, sections 13 and 48
Gas Act 1986, section 35
Local Government Act 1974, section 30
Naval Discipline Act 1957, section 66
Patents Act 1977, section 16
Postal Services Act 2000, sections 52, 53, 55 and 57
Radioactive Substances Act 1993, sections 25 and 39
Registered Designs Act 1949, section 17
Regulation of Investigatory Powers Act 2000, sections 17, 58(7), 60(5), 61(7) and 66(2)(b)
Water Industry Act 1991, sections 15(3A)-(3D), 15(6), 38A, 95A and 201

Other provisions reviewed

Air Force Act 1955, section 94
Armed Forces Act 1976, schedule 3 paragraph 3
Army Act 1955, section 94
Bank of England Act 1998, section 37
British Nationality (Falkland Islands) Act 1983, section 4
Companies Act 1985, section 451A
Consumer Protection Act 1987, section 37
Criminal Appeal Act 1995, section 24
Electricity Act 1989, section 14
Environment Act 1995, section 113(3)
Health Service Commissioners Act 1993, section 16
Hong Kong (War Wives and Widows) Act 1996, section 2

Insolvency Act 1986, section 48
 Naval Discipline Act 1957, section 61
 Official Secrets Act 1989, sections 8 and 9
 Parliamentary Commissioner Act 1967, sections 8 and 11(3)
 Social Security Contributions and Benefits Act 1992, section 16
 Taxes Management Act 1970, section 6 and schedule 1

Secondary Legislation

Provisions wholly revoked

Active Implantable Medical Devices Regulations 1992, regulation 10
 British Citizenship (Deprivation) Rules 1982, rule 8
 British Dependent Territories Citizenship (Deprivation) Rules 1982, rule 8
 Child Support Appeal Tribunals (Procedure) Regulations 1992, regulation 17
 Child Support Commissioners (Procedure) Regulations 1992, regulation 22
 Child Support Commissioners (Procedure) Regulations (Northern Ireland) 1993, regulation 22
 Community Health Councils Regulations 1996, regulation 19
 County Court Rules (Northern Ireland) 1981, rules 5, 17, 21, and 32
 Data Protection Tribunal (Enforcement Appeals) Rules 2000, rule 11
 Data Protection Tribunal (National Security Appeals) Rules 2000, rule 15
 Data Protection Tribunal (National Security Appeals) (Telecommunications) Rules 2000, rule 15
 Dual Use Items (Export Control) Regulations 2000
 EC Competition Law (Articles 88 and 89) Enforcement Regulations 1996
 Electromagnetic Compatibility Regulations 1992, regulation 97
 Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1994, regulation 6
 Foster Placement (Children) Regulations 1991, regulation 14
 Land Drainage Improvement Works (Assessment of Environmental Impact) Regulations 1988, regulation 7
 Marketing Authorisations for Veterinary Medicinal Products Regulations 1994, regulation 14
 National Health Service (General Medical Services) Regulations 1992, schedule 2 paragraph 50
 Natural Mineral Waters Regulations 1985, regulation 17
 Non-Automatic Weighing Instruments (EEC Requirements) Regulations 1995, regulation 38
 Personal Protective Equipment (EC Directive) Regulations 1992, regulation 3
 Plant Protection Products Regulations 1995, regulation 17 and schedule 1
 Public Supply Contracts Regulations 1991, regulation 18
 Recreational Craft Regulations 1996
 Road Vehicles (Registration and Licensing) Regulations 1971, regulation 15
 Special Immigration Appeals Commission (Procedure) Rules 1998, rule 3
 Telecommunication (Interconnection) Regulations 1997, regulations 6, 8, 11 and ICD 8.8-8.9
 Telecommunication (Open Network Provision) Voice Telephony Regulations 1998, regulations 26, 29 and 30
 Vaccine Damage Payments Regulations 1979, regulation 10

Provisions to be revoked by other means

Burma (Freezing of Funds) Regulations 2000, schedule paragraph 3
Child Support (Maintenance Assessment Procedure) Regulations 1992,
regulation 10 (*Child Support (Maintenance Calculation Procedure)
Regulations 2000*)
Food Premises (Registration) Regulations 1991, regulation 6 (*Food
Hygiene (England) Regulations 2005*)

Other provisions considered not to be bars to disclosure under the FOI Act *Provisions applying only to bodies not covered by the Freedom of Information Act 2000*

Adoption Rules 1984, rule 53(4)
Control of Pesticides Regulations 1986, regulation 8
Criminal Appeal (Reference Points of Law) (Northern Ireland) Rules 1973,
rule 6
Criminal Appeal (Reference Points of Law) Rules 1973, rule 6
Family Proceedings Courts (Children Act 1989) Rules 1991, rule 23
Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991,
rule 14
Family Proceedings Rules 1991, rule 4.23
Family Proceedings Rules (Northern Ireland) 1996, rules 4C.7(4) and 7.12
Magistrates' Courts (Adoption) Rules 1984, rule 32(6)
Magistrates' Courts (Children) (Northern Ireland) Order 1995) Rules
(Northern Ireland) 1996, rule 23
Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders)
(Hague Convention Countries) Rules 1980, schedule A1 paragraph 11
Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders)
(Republic of Ireland) Rules 1975, schedule A1, paragraph 11
Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders)
Rules 1974, schedule A1 paragraph 11
Magistrates' Courts Rules (Recovery Abroad of Maintenance) Rules 1975,
schedule 2 paragraph 11
Maintenance Orders (Facilities for Enforcement) Rules 1922, schedule
paragraph 11
Mental Health Review Tribunal Rules 1983, rule 6
Offshore Installations (Inspectors and Casualties) Regulations 1973,
regulation 6 and 7(4)

Discretionary or contextual restrictions on disclosure

Child Support Departure Direction and Consequential Amendments
Regulations 1996, regulation 8(1)
Coleg Menai (Government) Regulations 1994, regulation 14
Education (Government of Further Education Corporations (Former
Further Education Colleges)) Regulations 1992, regulation 14
Education (Government of Further Education Corporations) (Former Sixth
Form Colleges) Regulations 1992, regulation 16
Further Education Corporations (Yale College) Modification of Instrument
of Government Order 1999, paragraph 16
Public Services Contracts Regulations 1993, regulation 22
Public Supply Contracts Regulations 1995, regulation 22

Public Works Contracts Regulations 1991, regulation 21
Social Security and Child Support (Decisions and Appeals) Regulations 1999, regulation 42
Social Security (Medical Evidence) Regulations 1976, schedule 1 paragraph 7
Social Security (Medical Evidence) (Northern Ireland) Regulations 1976, schedule 1 paragraph 7

Other provisions reviewed

Adoption Rules 1984, rules 5(8), 6(11), 22(5) and 53(2)
Agricultural Land Tribunals (Rules) Order 1978, rule 20
Control of Major Accident Hazards Regulations 1999, regulations 14, 15, 16 and 21
Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, regulation 7
Family Proceedings Rules (Northern Ireland) 1996, Rule 4A.6(6)
Insolvency Rules 1986
Magistrates' Courts (Adoption) Rules 1984, rules 5(8), 6(10), 22(5) and 32(4)
Public Contracts (Works, Services and Supply) Regulations 2000, regulations 3(10), 4(10) and 5(10)

Annex A: Procedural Rules of Courts and Tribunals

The following procedural rules all contain bars to disclosure which operate both on the parties to the case and the court. Since courts are not public authorities for Freedom of Information purposes, it will depend on the individual circumstances of each case as to whether one of the parties in a particular case happens to be a public authority.

It is the Government's view that section 75 of the Freedom of Information Act is not an appropriate mechanism to use to amend these provisions, because to do so could lead to unwarranted inconsistencies arising between public authorities and other organisations. Furthermore, many other sets of procedural rules have been passed since November 2000. To amend only those falling within the scope of the section 75 power would again lead to undesirable inconsistencies.

The following procedural rules have appeared in previous reports as under consideration.

- Adoption Rules 1984, rule 53(3)
- Civil Procedure Rules 1998
- Child Support Commissioners (Procedure) Regulations (Northern Ireland) 1999, regulation 9
- Child Support Appeal Tribunals (Procedure) Rules (Northern Ireland) 1999, rule 9
- Family Proceedings Rules (Northern Ireland) 1996, rules 4A.18, 4A.22(5), and 4C.7(3)
- Magistrates' Courts (Adoption) Rules 1984, rule 32(5)
- Mental Health Review Tribunal Rules 1983, rule 12

In addition, the following provisions (which also appeared in previous reports) relate to court procedures. They may affect staff of Her Majesty's Court Service, as well as parties to proceedings and other organisations (who may or may not be public authorities), and the Government believes that they should be considered in the same context as the procedural rules above.

- Administration of Justice Act 1960, section 12
- Criminal Procedure and Investigations Act 1996, section 17
- Magistrates Courts Act 1980, section 125C
- Youth Justice and Criminal Evidence Act 1999, sections 44-47

Annex B: Provisions Repealed or amended by the Enterprise Act 2002

Part 9 of the Enterprise Act 2002 provides a single coherent access regime for consumer information. Schedule 26 of that Act, and the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (SI 2003/1400) repealed or amended a large number of provisions relating to disclosure of information which previously formed part of this review:

Primary Legislation

Competition Act 1980, sections 16 and 19
Competition Act 1998, sections 55 and 56
Consumer Credit Act 1974, section 174
Consumer Protection Act 1987, section 38
*Copyright, Designs and Patents Act 1988, section 107A
Estate Agents Act 1979, section 10
Fair Trading Act 1973, sections 30(3), 75H, 82, 83 and 133⁶
*Hallmarking Act 1973, section 9
Prices Act 1974, schedule paragraph 12
Property Misdescriptions Act 1991, schedule paragraph 7
Timeshare Act 1992, schedule 2 paragraph 5
Trade Marks Act 1994, section 93
Trade Descriptions Act 1968, section 28(5)
Video Recordings Act 1984, section 16A

Secondary Legislation

Consumer Credit Licensing (Appeals) Regulations 1998, regulation 23
Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987, regulation 4G
Control of Misleading Advertisements Regulations 1988, regulation 7(7)
*Crystal Glass (Description) Regulations 1973, regulation 8
Electrical Equipment (Safety) Regulations 1994, regulation 17
Estate Agents (Appeals) Regulations 1981, regulation 22
*Footwear (Indication of Composition) Labelling Regulations 1995, regulation 10
*Gas Appliances (Safety) Regulations 1995, regulation 32
Package Travel, Package Holidays and Package Tour Regulations 1992, schedule 3 paragraph 7
Pressure Equipment Regulations 1999, schedule 8 paragraph 2
Simple Pressure Vessels (Safety) Regulations 1991, schedule 5 paragraph 3
Supply of Machinery (Safety) Regulations 1992, schedule 6 paragraph 3
*Toys (Safety) Regulations 1995, regulation 16 (previously wrongly listed in interim reports as regulation 9(5))

⁶ Sections 82 and 83 of this Act were repealed by the Enterprise Act and Media Mergers (Consequential Amendments) Order 2003 (SI 2003/3180)

* Asterisked provisions apply prohibitions or restrictions on disclosure which were amended or repealed by the Enterprise Act or associated statutory instruments. They therefore now apply those prohibitions or restrictions 'as amended'.

Index

Abortion Act	49
Abortion Regulations	40
Access to Justice Act.....	8, 16
Access to Medical Reports Act	50
Active Implantable Medical Devices Regulations	51
Administration of Justice Act	54
Adoption Act.....	49
Adoption Agencies Regulations	40
Adoption Rules.....	52, 53, 54
Agricultural Land Tribunals (Rules) Order.....	53
Agricultural Marketing Act	10, 50
Agricultural Statistics Act	21
Agriculture Act	
1967	9
1970	9, 17
Agriculture and Horticulture Act.....	9
Air Force Act.....	21, 50
Aircraft and Shipbuilding Industries	10
Airports Act	17, 21
Alcoholometers and Alcohol Hydrometers (EEC Requirements) Regulations	40, 43, 46
Anatomy Act.....	49
Animals (Scientific Procedures) Act	22
Armed Forces Act.....	50
Army Act.....	22, 50
Arrangements for Placement of Children (General) Regulations	40
Atomic Energy Act	10
Atomic Energy Authority Act	50
Audit Commission Act	8
Bank of England Act	22, 50
Betting, Gaming and Lotteries Act.....	49
Biocidal Products (Northern Ireland) Regulations	41
Biocidal Products Regulations	41
Biological Standards Act	8, 14
British Citizenship (Deprivation) Rules	51
British Dependent Territories Citizenship (Deprivation) Rules	51
British Nationality (Falkland Islands) Act	50
British Nationality (Hong Kong) Act	49
British Nationality Act.....	49
Broadcasting Act	10, 49, 50
Building Act	23
Building Societies Act	23
Burma (Freezing of Funds) Regulations	52
Calibration of Tanks of Vessels (EEC Requirements) Regulations.....	41
Census Act.....	23, 32
Cereals Marketing Act	10
Chemical Weapons Act	23

Child Support (Maintenance Assessment Procedure) Regulations	52
Child Support Act.....	24, 25, 35
Child Support Appeal Tribunals (Procedure) Regulations	51
Child Support Commissioners (Procedure) Regulations	51
Child Support Commissioners (Procedure) Regulations (Northern Ireland)	51, 54
Child Support Departure Direction and Consequential Amendments Regulations	52
Civil Aviation (Investigation of Air Accidents and Incidents) Regulations	41
Civil Aviation Act.....	23
Civil Procedure Rules	54
Clean Air Act.....	10
Coal Industry Act	17
Coal Industry Nationalisation Act.....	49
Coast Protection Act	11
Coleg Menai (Government) Regulations	52
Community Health Councils Regulations	51
Companies Act	
1985	17, 50
1989	18
Company Securities (Insider Dealing) Act	49
Competition Act	
1980	17, 55
1998	55
Construction Products Regulations	41
Consumer Credit Act	55
Consumer Credit Licensing (Appeals) Regulations	55
Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations.....	55
Consumer Protection Act.....	50, 55
Control of Major Accident Hazards Regulations	53
Control of Misleading Advertisements Regulations	55
Control of Pesticides Regulations	52
Control of Pollution Act	49, 50
Copyright, Designs and Patents Act	55
County Court Rules (Northern Ireland).....	51
Courts and Legal Services Act.....	11
Covent Garden Marketing Act	11
Criminal Appeal (Reference Points of Law) Rules	52
Criminal Appeal Act	18, 50
Criminal Procedure and Investigations Act	54
Crystal Glass (Description) Regulations.....	55
Data Protection Act	24
Data Protection Tribunal (Enforcement Appeals) Rules	51
Data Protection Tribunal (National Security Appeals) (Telecommunications) Rules	51
Data Protection Tribunal (National Security Appeals) Rules	51
Deep Sea Mining (Temporary Provisions) Act	24
Diseases of Fish Act.....	11
Dual Use Items (Export Control) Regulations.....	51

EC Competition Law (Articles 84 and 85) Enforcement Regulations	42
EC Competition Law (Articles 88 and 89) Enforcement Regulations	51
Education (Government of Former Further Education Corporations (Former Further Education Colleges)) Regulations	52
Education (Government of Further Education Corporations) (Former Sixth Form Colleges) Regulations	52
Education (Special Needs) (England) Consolidation Regulations	42
Education Act	49
Electrical Equipment (Safety) Regulations	55
Electricity Act	49, 50
Electromagnetic Compatibility Regulations	51
Electronic Communications Act	49
Energy Act	19
Energy Conservation Act	49
Environment Act	50
Environmental Assessment (Salmon Farming in Marine Waters) Regulations	51
Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations	53
Environmental Protection Act.....	12, 49
Estate Agents (Appeals) Regulations	55
Estate Agents Act.....	55
European Communities Act	25
Factories Act	7
Fair Trading Act	55
Family Proceedings Courts (Children Act 1989) Rules	52
Family Proceedings Courts (Matrimonial Proceedings etc) Rules.....	52
Family Proceedings Rules	52
Family Proceedings Rules (Northern Ireland).....	52, 53, 54
Finance Act.....	25
Financial Services and Markets Act.....	23, 25, 26
Fire Precautions Act	49
Fisheries Act.....	12
Food and Environment Protection Act.....	50
Food Premises (Registration) Regulations	52
Food Safety Act	26, 49
Food Standards Act	26
Footwear (Indication of Composition) Labelling Regulations	55
Fossil Fuel Levy Regulations	20
Foster Placement (Children) Regulations.....	51
Friendly Societies Act.....	26
Further Education Corporations (Yale College) Modification of Instrument of Government Order	52
Gas Act.....	12, 49, 50
Gas Appliances (Safety) Regulations	7, 55
General Teaching Council for England (Registration of Teachers) Regulations.....	20
General Teaching Council for Wales (Functions) Regulations	20
Genetically Modified Organisms (Contained Use) Regulations	42

Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland)	43
Greater London Authority Act	19
Hallmarking Act	55
Harbours Act	12
Health and Safety at Work (Northern Ireland) Order	16
Health and Safety at Work etc. Act	7, 14, 16
Health Service Commissioners Act	26, 50
Highways Act	19
Hong Kong (War Wives and Widows) Act	50
Human Fertilisation and Embryology Act.....	12
Immigration and Asylum Act	49
Industrial Organisation and Development Act	13
Industrial Training Act.....	19
Insolvency Act	51
Insolvency Rules.....	53
Intelligence Services Act	50
Iron and Steel Act.....	50
Land Drainage Act	13
Land Drainage Improvement Works (Assessment of Environmental Impact) Regulations	51
Legal Aid Act	49
Legal Aid, Advice and Assistance (Northern Ireland) Order.....	16
Lloyd's Act	50
Local Government (Miscellaneous Provisions) Act	26
Local Government Act	8, 27, 50
Local Government Finance Act	27, 49
Local Government, Planning and Land Act.....	27, 49
London Building Acts (Amendment) Act	27, 28
London County Council (General Powers) Act 1949	28
1957	28
Magistrates Courts Act	54
Magistrates' Courts (Adoption) Rules	52, 53, 54
Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland)	52
Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules	52
Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules	52
Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules	52
Magistrates' Courts (Recovery Abroad of Maintenance) Rules.....	52
Maintenance Orders (Facilities for Enforcement) Rules.....	52
Marketing Authorisations for Veterinary Medicinal Products Regulations.....	51
Measuring Container Bottles (EEC Requirements) Regulations	43
Measuring Instruments (EEC Requirements) Regulations	43
Medical Devices Regulations	43

Medicines Act.....	7, 14
Mental Health Act.....	49
Mental Health Review Tribunal Rules.....	52, 54
Merchant Shipping (Liner Conferences) Act	28
Merchant Shipping Act	13, 28, 29
Milk Marketing Boards (Special Conditions) Regulations	16
National Health Service (General Medical Services) Regulations	51
National Health Service (Venereal Diseases) Regulations	43
National Health Service Act	8, 49
National Health Service Trusts and Primary Care Trusts (Sexually Transmitted Diseases) Directions	43
National Minimum Wage Act	19, 20
National Savings Bank Act	29, 43, 45, 46
National Savings Stock Register Regulations	43
Natural Mineral Waters Regulations.....	51
Naval Discipline Act	29, 50, 51
Non-Automatic Weighing Instruments (EEC Requirements) Regulations	51
Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules	43
Notification of New Substances (Northern Ireland) Regulations	16, 44
Notification of New Substances Regulations.....	7, 44
Nuclear Installations Act.....	49
Nuclear Safeguards Act	29
Offices, Shops and Railway Premises Act.....	7
Official Secrets Act.....	26, 29, 51
Offshore Installations (Inspectors and Casualties) Regulations.....	52
Offshore Safety Act	50
Package Travel, Package Holidays and Package Tour Regulations	55
Parliamentary Commissioner Act.....	30, 51
Patents Act.....	30, 51
Pension Schemes Act	50
Pensions Act	49
Personal Protective Equipment (EC Directive) Regulations.....	52
Petroleum Act.....	31, 49
Petroleum Production (Landward Areas) Regulations	44
Petroleum Production (Northern Ireland) Regulations	44
Petroleum Production (Seaward Areas) Regulations	44
Pipe-lines Act	31, 49
Planning (Hazardous Substances) Act.....	31, 50
Planning (Listed Buildings and Conservation Areas) Act.....	50
Plant Protection Products Regulations	51
Police (Northern Ireland) Act	32
Police Act	32
Population (Statistics) Act	32
Postal Services Act	20, 50
Premium Savings Bonds Regulations	45
Pressure Equipment Regulations.....	7, 16, 55
Prices Act	55
Proceeds of Crime (Northern Ireland) Order	45

Property Misdescriptions Act	55
Public Contracts (Works, Services and Supply) Regulations	53
Public Health (Control of Disease) Act.....	14, 45
Public Health (Infectious Diseases) Regulations	45
Public Services Contracts Regulations	52
Public Supply Contracts Regulations	45, 51, 52
Public Works Contracts Regulations	53
Radioactive Material (Road Transport) Act	33
Radioactive Substances Act	33, 50
Railways Act.....	33
Recreational Craft Regulations.....	51
Registered Designs Act	14, 34, 50
Regulation of Investigatory Powers Act.....	34, 50
Rehabilitation of Offenders (Northern Ireland) Order	46
Rehabilitation of Offenders Act	35, 46
Rent (Agriculture) Act	14
Restrictive Trade Practices Act	49
Rivers (Prevention of Pollution) Act	14
Road Traffic Regulation Act	35
Road Vehicles (Registration and Licensing) Regulations.....	51
Savings Certificates (Children’s Bonus Bonds) Regulations	46
Savings Certificates (Yearly Plan) Regulations.....	46
Savings Contracts Regulations	46
Sea Fish Industry Act	14
Security Services Act	50
Sex Discrimination Act.....	49
Sexual Offences (Amendment) Act	35, 49
Shipping and Trading Interests (Protection) Act	20
Simple Pressure Vessels (Safety) Regulations.....	7, 16, 55
Social Security (Medical Evidence) (Northern Ireland) Regulations.....	53
Social Security (Medical Evidence) Regulations	53
Social Security Administration Act.....	35
Social Security and Child Support (Decisions and Appeals) Regulations.....	53
Social Security Contributions and Benefits Act.....	51
Special Immigration Appeals Commission (Procedure) Rules.....	51
Statistics of Trade Act	36
Statutory Water Companies Act.....	36
Supply of Machinery (Safety) Regulation.....	7, 16, 55
Taxes Management Act	51
Taximeters (EEC Requirements) Regulations.....	46
Telecommunications (Interconnection) Regulations.....	51
Telecommunications (Open Network Provision) Voice Telephony Regulations	51
Telecommunications Act	21, 36, 38, 49
Timeshare Act.....	55
Town and Country Planning Act.....	37, 50
Toys (Safety) Regulations	55
Trade Descriptions Act.....	55
Trade Marks Act	55

Utilities Act	37
Utilities Contracts Regulations	46
Vaccine Damage Payments Regulations	51
Vehicle Excise and Registration Act.....	50
Video Recordings Act.....	55
Water Act	15
Water Industry Act	15, 36, 37, 38, 49, 50
Water Resources Act	13, 15, 38
Weights and Measures Act	38
Wireless Telegraphy Act	39
Youth Justice and Criminal Evidence Act	54

