

SCHEDULES

SCHEDULE 11

Section 36

DISCLOSURE OF INFORMATION

Information to which this Schedule applies

- 1 (1) This Schedule applies to information relating to a particular body or person—
 - (a) that is obtained by a local auditor, or a person acting on behalf of a local auditor, under or by virtue of this Act or in the course of an audit under this Act, or
 - (b) that is obtained by an inspector or an assistant inspector, or a person acting on behalf of an inspector or an assistant inspector, under Part 1 of the Local Government Act 1999 (inspection of best value authorities) or in the course of an inspection under that Part.
- (2) This Schedule also applies to information relating to a particular body or person that is obtained by an authority within sub-paragraph (3) in connection with the exercise of the authority's functions under or by virtue of this Act.
- (3) Those authorities are—
 - (a) a recognised supervisory body,
 - (b) a recognised qualifying body,
 - (c) a body performing functions for the purposes of arrangements within paragraph 23(1) (independent monitoring of certain audits) or 24(1) (independent investigation of public interest cases) of Schedule 10 to the Companies Act 2006 as it has effect by virtue of Schedule 5,
 - (d) the Secretary of State, and
 - (e) a body designated by the Secretary of State under section 1252 of the Companies Act 2006 (delegation of the Secretary of State's functions) as it has effect by virtue of Schedule 5.

General bar on disclosure and exceptions

- 2 (1) Information to which this Schedule applies may not be disclosed except—
 - (a) with the consent of the body or person to whom the information relates,
 - (b) for the purposes of any functions of a person under or by virtue of this Act or Part 1 of the Local Government Act 1999,
 - (c) for the purposes of any function of a person under or by virtue of Part 42 of the Companies Act 2006,
 - (d) in the case of information relating to a health service body, for the purposes of—
 - (i) the functions of the Secretary of State, the National Health Service Commissioning Board or the Comptroller and Auditor General under the National Health Service Act 2006, or

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- (ii) the functions of the Welsh Ministers under Chapter 4 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003,
 - (e) to Her Majesty’s Chief Inspector of Education, Children’s Services and Skills for the purposes of the Chief Inspector’s functions under Chapter 4 of Part 8 of the Education and Inspections Act 2006,
 - (f) for the purposes of the functions of the Regulator of Social Housing under Part 2 of the Housing and Regeneration Act 2008,
 - (g) for the purposes of the functions of the Secretary of State relating to social security,
 - (h) for the purposes of any function of the Auditor General for Wales under the Public Audit (Wales) Act 2004,
 - (i) to the Mayor of London, where the information relates to the Greater London Authority or a functional body,
 - (j) for the purposes of the functions of the Public Services Ombudsman for Wales under Part 3 of the Local Government Act 2000, or
 - (k) for the purposes of the functions of a monitoring officer under that Part or regulations made under that Part.
- (2) This paragraph does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (3) This paragraph does not limit the circumstances in which information may be disclosed apart from this Schedule (and see in particular section 17 of the Anti-terrorism, Crime and Security Act 2001 (extension of disclosure powers under other Acts: criminal proceedings and investigations)).

Further exceptions

- 3 (1) A person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000 may also disclose information to which this Schedule applies unless the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the person by or under an enactment.
- (2) A local auditor, or a person acting on the auditor’s behalf, may also disclose information to which this Schedule applies except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the auditor by or under an enactment.

Disclosure with consent of local auditor

- 4 (1) A person who does not fall within paragraph 3 may also disclose information to which this Schedule applies in accordance with consent given by a local auditor under this paragraph.
- (2) A person requesting consent (“the applicant”) must make a request for consent which—
- (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence,
 - (c) describes the information in relation to which consent is requested, and
 - (d) identifies the person to whom the information will be disclosed.

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- (3) Consent must be given except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on a local auditor by or under an enactment.
- (4) Consent may be given or refused orally or in writing; but where it is given or refused orally the consent or refusal must be confirmed in writing.
- (5) A refusal (or, where the refusal is given orally, the confirmation of the refusal) must contain the reasons for the refusal.
- (6) A local auditor to whom a request for consent is made must give or refuse consent not later than the twentieth working day following the day on which the request is received.
- (7) “Working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Offence of wrongful disclosure

- 5 (1) A person who discloses information in breach of this Schedule is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) If section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed—
 - (a) section 85 of that Act (removal of limit on certain fines on conviction by magistrates’ court) applies in relation to the offence in sub-paragraph (1) as if it were a relevant offence (as defined in section 85(3) of that Act), and
 - (b) regulations described in section 85(11) of that Act may amend or otherwise modify sub-paragraph (1).

Meaning of “enactment”

- 6 In this Schedule “enactment” includes—
 - (a) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation.