

便箋

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刑事法中公眾利益的辯護

背景

在1999年1月19日的司法及法律事務委員會會議上，委員要求法律事務部就刑事法中公眾利益的辯護進行研究。“公眾利益的辯護”並無任何一般定義。就本文而言，該詞解作被控人可藉提出被禁止的作為是基於公眾利益而作出，作為其獲免除刑責的辯護。本文旨在識別哪些刑事法律條文規定被告人可提出被視為公眾利益的辯護作為免責辯護。

刑事法中以公眾利益的辯護作為一般免責辯護

2. 被告人若有犯罪意圖並作出相應犯罪行為，一般須為此負上法律責任。但事實並非一定如此，因為即使在上述情況下，被告人仍可提出抗辯。除了適用於特定罪行的特別辯護外，另有一些辯護普遍適用於刑事罪行。在刑事法中，下列辯護獲認可為一般免責辯護：被告人未成年、精神錯亂、受減責神智失常影響而犯罪、犯有錯誤、昏醉、被威迫和脅迫犯罪、在別無選擇的情況下犯罪、因公共防衛和自衛犯罪、因遵從不可抗拒的命令犯罪，以及所犯罪行並不可能。在刑事法中，一般免責辯護並無公眾利益的辯護一類。從表面看來，公共防衛辯護似乎與公眾利益辯護相若，但公共防衛辯護實際是指法律准許某人在特定情況下使用合理武力拯救另一人的生命或保護其財產。

以公眾利益的辯護作為法規所訂罪行的免責辯護

3. 在法規內就其所涵蓋罪行提出的辯護中，有部分可被視為公眾利益的辯護，現列舉若干例子如下：

(a) 《防止賄賂條例》（第 201 章）第 30 條¹

該條例第 30(1)條規定，任何人如無合法權限或合理辯解，而將受廉政公署調查的人的身分或相關資料向該人或公眾披露，即屬犯罪。該條文第(2)及(3)款則就禁止作出披露的若干例外情況作出規定。第(3)款與本文所討論的問題有關，該條文原文轉載如下：

“(3) 在不影響第(1)款中的“合理辯解”一詞的一般性原則下，如任何人在以下情況下（但亦只有在以下範圍內）作該款所提及的任何種類的披露，即就該項披露而言屬有合理辯解——

- (a) 該項披露公開專員、副專員或任何廉政公署人員的不合法活動、濫用權力、嚴重疏於職守或其他嚴重不當行爲；或
- (b) 該項披露公開一項對香港的公共秩序或安全或公眾的健康或安全的嚴重威脅。”。

該條例曾在 1996 年作出修訂，以加入上述條文。該條文的用意，是按(a)及(b)段訂明的條件就一項公眾利益辯護作出規定，以便向法庭提供特定準則，藉此決定被告人作出被禁止的披露是否有合理辯解。

(b) 《淫褻及不雅物品管制條例》（第 390 章）第 28 條²

該條例第 IV 部訂有多項與發布淫褻及不雅物品有關的罪行。第 IV 部第 28 條規定——

“凡有因發布物品或公開展示事物而根據本部提出的控罪，如得到審裁處同意該項發布或展示是擬為公益而作的，理由是發布該物品或展示該事物有利於科學、文學、藝術、學術或大眾關注的其他事項，即可作為該控罪的免責辯護。”。

若被控人根據第 28 條提出免責辯護，審裁處應只在作出有關物品是淫褻物品的結論後，才考慮公益問題。審裁處繼而須考慮其相信有關書籍會令多少讀者墮落及敗壞、令人墮落及敗壞的機會有多大，以及所引致的墮落或敗壞屬何性質；另一方面，審裁處亦需要評估該書籍在文學、社會或道德方面有何可取之處。在衡量上述各項因素後，審裁處會決定該書

¹ 附件 1。

² 附件 2。

籍是基於公益而發布的論點整體上是否有理據支持³。有一點似乎很清楚，就是被控人須負起在相對可能性的衡量下確立該辯護的責任⁴。

(c) 英國《1986年金融服務法令》第180條⁵

該法令第179條規定，指明人士如披露其在履行該法令所訂職能時獲得有關任何人士的商業活動或其他事務的資料，即屬犯罪。第180(2)條規定，如披露是因投資者的利益或公眾利益而作出，第179條並不阻止指明人士將該等資料向有關大臣或財政部披露。但直至目前為止，並無任何與該條文有關的案例，而該法令亦沒有就公眾利益提供任何定義。

法律顧問 馬耀添

連附件

³ R. v. Calder and Boyars Ltd [1969] 1 Q.B. 151 載於附件 3。

⁴ 同上。

⁵ 附件 4。

29. Offence of making a false report of the commission of offence, etc.

Any person who, during the course of an investigation into, or in any proceedings relating to, an offence alleged or suspected to have been committed under this Ordinance, knowingly—

- (a) makes or causes to be made a false report of the commission of an offence under this Ordinance to any investigating officer specified in an authorization given under section 13; or
- (b) misleads any investigating officer specified in an authorization given under section 13,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$20,000 and to imprisonment for 1 year.

(Amended 9 of 1974 s. 12)

✓ 30. Offence to disclose identity, etc. of persons being investigated

(1) Any person who knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under Part II is taking place, without lawful authority or reasonable excuse, discloses to—

- (a) the person who is the subject of the investigation (the "subject person") the fact that he is so subject or any details of such investigation; or
- (b) the public, a section of the public or any particular person the identity of the subject person or the fact that the subject person is so subject or any details of such investigation,

shall be guilty of an offence and shall be liable on conviction to a fine of \$20,000 and to imprisonment for 1 year. (Replaced 48 of 1996 s. 15)

(2) Subsection (1) shall not apply as regards disclosure of any of the descriptions mentioned in that subsection where, in connection with such investigation—

- (a) a warrant has been issued for the arrest of the subject person;
- (b) the subject person has been arrested whether with or without warrant;
- (c) the subject person has been required to furnish a statutory declaration or a statement in writing by a notice served on him under section 14(1)(a) or (b);
- (d) a restraining order has been served on any person under section 14C(3);
- (e) the residence of the subject person has been searched under a warrant issued under section 17; or

29. 虛報犯罪等的罪行

凡有指稱或懷疑犯了本條例所訂罪行，在該罪行的調查過程中，或在與該罪行有關的法律程序中，任何人明知而——

- (a) 向根據第 13 條所發授權書內指明的調查人員作出或導致作出已有人犯了本條例所訂罪行的虛假報告；或
- (b) 誤導根據第 13 條所發授權書內指明的調查人員，

即屬犯罪，一經循簡易程序定罪，可處罰款 \$20,000 及監禁 1 年。

(由 1974 年第 9 號第 12 條修訂)

30. 披露受調查人身分等資料的罪行

(1) 任何明知或懷疑正有調查就任何被指稱或懷疑已犯的第 II 部所訂罪行而進行的人如無合法權限或合理辯解，而向——

- (a) 該項調查的標的之人("受調查人")披露他是該項調查的標的此一事實或該項調查的任何細節；或
- (b) 公眾、部分公眾或任何特定人士披露該受調查人的身分或該受調查人正受調查的事實或該項調查的任何細節，

即屬犯罪，一經定罪，可處罰款 \$20,000 及監禁 1 年。(由 1996 年第 48 號第 15 條代替)

(2) 凡在與調查有關連的情況下，有以下情形——

- (a) 已就逮捕受調查人發出手令；
- (b) 受調查人已(不論有或沒有手令的情況下)被逮捕；
- (c) 受調查人已被根據第 14(1)(a) 或 (b) 條送達手令的通知書要求提交法定聲明或宣誓陳述；
- (d) 已根據第 14C(3) 條將限制令送達任何人；
- (e) 受調查人的住所已根據在第 17 條下發出的手令被搜查；或

(f) the subject person has been required to surrender to the Commissioner any travel document in his possession by a notice served on him under section 17A. (Replaced 48 of 1996 s. 16)

(3) Without affecting the generality of the expression "reasonable excuse" in subsection (1) a person has a reasonable excuse as regards disclosure of any of the descriptions mentioned in that subsection if, but only to the extent that, the disclosure reveals—

- (a) any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the Commissioner, the Deputy Commissioner or any officer of the Commission; or
- (b) a serious threat to public order or to the security of Hong Kong or to the health or safety of the public. (Replaced 48 of 1996 s. 16)

30A. Protection of informers

(1) Save as provided in subsection (2)—

- (a) no information for an offence under this Ordinance shall be admitted in evidence in any civil or criminal proceeding; and
- (b) no witness in any civil or criminal proceeding shall be obliged—
 - (i) to disclose the name or address of any informer who has given information to the Commissioner with respect to an offence under this Ordinance or of any person who has assisted the Commissioner in any way with respect to such an offence; or

(f) 受調查人已被根據第 17A 條送達予他的通知書要求各專員交出其管有的任何旅行證件，

則就第 (1) 款所提及的任何種類的披露而言，第 (1) 款不適用。 (由 1996 年第 48 號第 16 條代替)

(3) 在不影響第 (1) 款中的“合理辯解”一詞的一般性的原則下，如任何人在以下情況下 (但亦只有在以下範圍內) 作該款所提及的任何種類的披露，即就該項披露而言屬有合理辯解——

- (a) 該項披露公開專員、副專員或任何廉政公署人員的不合法活動、濫用權力、嚴重疏於職守或其他嚴重不當行為；或
- (b) 該項披露公開一項對香港的公共秩序或安全或公眾的健康或安全的嚴重威脅。 (由 1996 年第 48 號第 16 條代替)

30A. 對舉報人的保障

(1) 除第 (2) 款另有訂定外——

- (a) 就本條例所訂罪行而獲得的資料，不得在任何民事或刑事程序中接納為證據；及
- (b) 在任何民事或刑事程序中，如曾就本條例所訂罪行向專員舉報資料的人或曾就該罪行向專員提供任何協助的人並非該程序中的證人，則該程序中的任何證人無須——
 - (i) 披露該舉報人或協助人的姓名或地址；或

- (ii) as a person licensed to broadcast under section 8 of the Television Ordinance (Cap. 52) for the purpose of submitting it under that Ordinance for broadcast under that Ordinance;
- (c) at the time the offence is alleged to have been committed, he—
 - (i) had had no reasonable opportunity to inspect the article the subject of the charge; and
 - (ii) had reasonable grounds for believing that the article was not indecent; or
- (d) at the time the offence is alleged to have been committed, he had good and sufficient reasons to believe that the requirements of section 24 and the conditions imposed under section 8(2)(c) had been complied with.

(Added 73 of 1995 s. 10)

28. Defence of public good

It shall be a defence to a charge under this Part in respect of the publication of an article or the public display of matter if that publication or display, as the case may be, is found by a Tribunal to have been intended for the public good on the ground that such publication or display was in the interests of science, literature, art or learning, or any other object of general concern.

PART V

DETERMINATION BY A TRIBUNAL

29. Tribunal to have exclusive jurisdiction

- (1) A Tribunal shall have exclusive jurisdiction to determine whether—
 - (a) any article is obscene or indecent;
 - (b) any matter that is publicly displayed is indecent; or
 - (c) the ground of defence under section 28 is proved in respect of the publication of an article or the public display of any matter.
- (2) Subject to subsection (3), where in any civil or criminal proceedings before a court or magistrate a question arises as to any of the matters mentioned in subsection (1), that court or magistrate shall refer that question to a Tribunal; and the parties to those civil or criminal proceedings and, in the case of proceedings to which a public officer is not a party, the Attorney General or their representatives, may appear and be heard at any hearing of that Tribunal relating to that reference.

- (ii) 由作為根據《電視條例》(第52章)第8條領有廣播牌照的人的被告人管有，以根據該條例呈交，使能根據該條例廣播；
- (c) 在指稱為罪行發生的時間，他——
 - (i) 沒有合理機會檢查控器所指的物品；及
 - (ii) 有合理理由相信該物品並非不雅；或
- (d) 在指稱為罪行發生的時間，他有良好及充分的理由相信第24條的規定及根據第8(2)(c)條定下的條件已獲遵從。

(由1995年第73號第10條增補)

28. 以公益作為免責辯護

凡有因發布物品或公開展示事物而根據本部提出的控罪，如得到審裁處同意該項發布或展示是擬為公益而作的，理由是發布該物品或展示該事物有利於科學、文學、藝術、學術或大眾關注的其他事項，即可作為該控罪的免責辯護。

第V部

審裁處的裁定

29. 審裁處的專有審判權

- (1) 審裁處具專有審判權，以裁定——
 - (a) 物品是否淫褻或不雅；
 - (b) 公開展示的事物是否不雅；或
 - (c) 為發布物品或公開展示事物而根據第28條提出的免責辯護理由是否已證明成立。
- (2) 除第(3)款另有規定外，在任何在法院或裁判官席前進行的民事或刑事法律程序中，如出現關於第(1)款所述事項的問題，有關法院或裁判官須將該問題轉交審裁處；而該項民事或刑事法律程序的各方或其代表可在有關該問題的審裁處聆訊中出席並作陳述；如法律程序各方之中並無公職人員，則律政司或其代表亦可在該聆訊中出席並作陳述。

A course, is perfectly proper in the case of a sentence which takes immediate effect, but it would be quite impossible to provide in this case, and the court does not so provide, that the suspended sentences of six months on each count consecutive should be consecutive to the period of imprisonment he is now serving. Indeed, it is quite impossible in practice when one thinks of it, to provide a sentence suspended for three years which is consecutive to a sentence being served.²

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Reg.
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Flanders

B Finally, the court would draw attention to what was said in the very last case,³ that really this difficulty only arises when chairmen and deputy chairmen give small sentences of imprisonment on each count, and make them consecutive. If in the present case the chairman had given a sentence of 12 months' imprisonment on each of these counts and made them concurrent, this difficulty would never have arisen.

Appeal allowed.

Solicitors: Registrar of Criminal Appeals.

H. J.

² See Reg. v. Sapiano. The Times, July 26, 1968.

³ Reg. v. Brown (unreported) July 26, 1968.

[COURT OF APPEAL]

REGINA v. CALDER & BOYARS LTD.

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1968
July 22, 23,
24, 31

F Crime—Obscene libel—Defence of public good—Proof—Whether onus on defendant—Standard—Whether balance of probabilities—Expert witnesses—Order of calling—Whether discretion in court to rule that experts be called first for defence and in rebuttal for prosecution—Proper direction on defence that publication justified because of literary, sociological or ethical merit of book—Factors for weighing by jury—Whether for jury to set standards of contemporary acceptability and public good—Omission to give proper direction—Whether defect—Whether cured or lessened by direction in general terms to consider whether publication justified as being for public good—Whether conviction maintainable by application of proviso to Act of 1907—Obscene Publications Act, 1959 (7 & 8 Eliz. 2, c. 66), ss. 1 (1), 4—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1) (as amended by Criminal Appeal Act, 1966 (c. 31), s. 4 (1)).

SALMON
L.J.
GEORGEY
LAMB
and
FISHER JJ.

Applied to D v STARDON (1972) 2
All XE 487
Applied in R v ARKINSON (1971) 2
All XE 1152

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Crime—Obscene libel—Obscene article—“... effect... to tend to deprave and corrupt persons... likely... to read” book—“Persons”—Whether majority of likely readers—Whether average reader—Significant proportion of likely readers—Whether for jury to decide what is significant proportion of persons likely to read book—“Obscene”—Definition—Book with words and incidents colloquially obscene—Denial that book obscene within statutory definition—Defence that feelings of horror, revulsion and pity produced by book having reverse of tendency to deprave and corrupt—Importance of explanation of defence to jury—Absence of explanation—Whether serious defect in direction—Whether cured by references to expert evidence on defence of publication justifiably for public good—Questions of obscenity of book and publication for public good—Whether for Court of Appeal (post, p. 1660).

Statute—Construction—Meaning of word—Definition in plain English of word or phrase—Whether necessary or wise for judge to attempt to improve on or re-define definition.

The defendants were charged with contravening section 2 (1) of the Obscene Publications Act, 1959,¹ in publishing a book which was admittedly and intentionally disgusting, shocking and outrageous. They denied that it was obscene within section 1 (1) and put forward the specific defence on the issue of obscenity that the only effect the book would produce in any but a minute lunatic fringe of readers would be horror, revulsion and pity; and a further defence was raised that publication was justified as being for the public good on the ground of literary, sociological or ethical merits in accordance with section 4, on which the trial judge ruled that expert witnesses should be heard first for the defence and in rebuttal for the prosecution. The direction to the jury on section 1 was that the essence of the matter was moral corruption and, in general terms, that it was insufficient for the prosecution to prove merely that the book tended to horrify, shock, disgust or nauseate, and that the determination of the issue of obscenity depended on the jury's view after reading the book, and was to be considered by itself, and the book's tendency was to be decided without reference to the evidence of expert witnesses. On section 4 the jury were referred to the expert evidence and directed that if they were satisfied on a balance of probabili-

¹ Obscene Publications Act, 1959, s. 1: “(1) ... an article shall be deemed to be obscene if its effect ... is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read ... it.”

S. 2: “(1) Subject as hereinafter provided, any person who ... publishes an obscene article shall be liable” [to a penalty].

S. 4: “(1) A person shall not be

convicted of an offence against section 2 ... if it is proved that publication of the article ... is justified as being for the public good on the ground that it is in the interests of ... literature ... or of other objects of general concern. (2) It is hereby declared that the opinion of experts as to the literary ... or other merits of an article may be admitted ... either to establish or to negative the said ground.”

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A

ties that the book was published justifiably for the public good on account of literary, sociological or ethical merit, they should acquit. They were given no guidance about the meaning of "persons" who were likely to read the book or about the specific defence on the issue of obscenity; and the defendants were convicted.

B

On appeal, on the contentions that the direction should have explained the essence of moral corruption, that the defence in answer to the allegation that the book was obscene was not put, and that no guidance had been given about the meaning of section 4 or how the defence under it should be approached:—

C

Held, allowing the appeal, (1) that the jury should have been directed to consider whether the effect of the book was to deprave and corrupt what in their decision was a significant proportion of the persons likely to read it (post, p. 168E); but that the absence of such a direction did not by itself vitiate the conviction (post, p. 168F).

D

(2) That, since the book contained many words and incidents rightly described as obscene in the ordinary and colloquial sense of the word, it was important to explain to the jury the specific defence that their true effect in context was the reverse of tending to deprave and corrupt a significant proportion of the persons likely to read it (post, pp. 169C, 170C, D); and that failure to direct the jury about the specific defence on obscenity was a serious defect (post, p. 169D) which was not cured by references to the evidence of expert witnesses during the direction on the defence of publication justifiably for the public good under section 4 (post, p. 170A);

E

Director of Public Prosecutions v. A. and B. C. Chewing Gum Ltd. [1968] 1 Q.B. 159; [1967] 3 W.L.R. 493; [1967] 2 All E.R. 504, D.C., distinguished.

F

(3) That the onus was on the defendants to establish a defence under section 4 on a balance of probabilities (post, p. 171A); but that the trial judge had a discretion to rule whether defence or prosecution witnesses should be heard first on the issue (post, p. 171C); and that no valid criticism could be made of the discretionary ruling that the defence expert witnesses should be heard first (post, p. 171C).

G

(4) That a proper direction on the defence of publication justifiably for the public good under section 4 was that the jury had to decide whether on the balance of probabilities the publication was proved to be justified as being for the public good after they had considered the number of readers they believed would tend to be depraved and corrupted by the book, the strength of the tendency to deprave and corrupt, and the nature of the depravity or corruption, and had assessed the strength of the literary, sociological or ethical merit they considered the book to possess, and had weighed up those factors (post, p. 172A-D). That the omission to give such a direction was a defect which was not cured or lessened by the direction in general terms to consider whether the publication was justified as being for the public

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Boyars Ltd.

good (post, p. 172F); and that, accordingly, since it was impossible to state without doubt that the jury would have rejected the defence on obscenity and under section 4 if proper directions had been given, it was impossible to be satisfied that no miscarriage of justice had occurred and the conviction could not be upheld by applying the proviso to section 4 of the Criminal Appeal Act, 1907 (as amended) (post, pp. 172G—173A).

Per curiam: When a statute lays down the definition of a word or phrase in plain English it is rarely necessary and often unwise for the judge to attempt to improve upon or re-define the definition (post, p. 168A). The jury must set the standards of what is acceptable, of what is for the public good in the age in which we live (post, p. 172F).

APPEAL against conviction.

On November 13, 1967, at the Central Criminal Court (Judge Rogers) the defendants, Calder & Boyars Ltd., the appellants, were charged on an indictment containing two counts. Count 1 charged that on a day between August 30, 1966, and January 19, 1967, they had an obscene article, namely a book (entitled *Last Exit to Brooklyn* by Hubert Selby Jr.), for publication for gain, contrary to section 2 (1) of the Obscene Publications Act, 1959, as amended by the Obscene Publications Act, 1964. Count 2 charged that, on a day between October 26, 1966, and December 31, 1966, they published an obscene article, namely, the book, contrary to section 2 (1). To the indictment the defendants pleaded not guilty.

Before the jury were empanelled counsel for the prosecution sought a ruling on a submission by him that "the proper time for the Crown to call its evidence on any section 4 matter" [i.e., a defence that publication was justified as being for the public good in accordance with the section] "would be after they have been raised by the defence," namely, not as part of the case for the prosecution but in rebuttal. The court ruled in favour of the submission, further ruled that expert evidence was not admissible to show the probable effect of the book on particular groups of persons, and ordered an all male jury to be empanelled. After counsel for the prosecution addressed the jury and called some evidence, counsel for the defence made a short opening address, and the jury were provided with copies of the book which had a selling price of 30s. and hard-back covers containing some 217 pages of print each with some 400 words; many words and descriptions were obscene in the colloquial sense of the word. The jury were directed in the following terms:

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s 207(1) post. for "transferee body", see Sch 11, para 28(4) to this Act, Vol 19, title Friendly Societies. Note as to "the primary recipient", sub-s (1) above, and as to "restricted information", sub-s (2), (4) above (and see also s 180(7) post.)

✓ 180 Exceptions from restrictions on disclosure

(1) Section 179 above shall not preclude the disclosure of information—

- (a) with a view to the institution of or otherwise for the purposes of criminal proceedings;
- (b) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act or proceedings before the Tribunal;
- (c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by this Act or by the enactments relating to companies, insurance companies or insolvency [or by Part II, III or VII of the Companies Act 1989] or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to discharge his functions;
- (d) for the purpose of enabling or assisting the Department of Economic Development for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by it under the enactments relating to companies to discharge his functions;
- [(e) for the purpose—
 - (i) of enabling or assisting a designated agency to discharge its functions under this Act or Part VII of the Companies Act 1989,
 - (ii) of enabling or assisting a transferee body or the competent authority to discharge its functions under this Act, or
 - (iii) of enabling or assisting the body administering a scheme under section 54 above to discharge its functions under the scheme;]
- (f) for the purpose of enabling or assisting the Bank of England to discharge its functions under [the Banking Act 1987] or any other functions;
- (g) for the purpose of enabling or assisting the Deposit Protection Board to discharge its functions under that Act;
- (h) for the purpose of enabling or assisting the Chief Registrar of friendly societies or the Registrar of Friendly Societies for Northern Ireland to discharge his functions under this Act or under the enactments relating to friendly societies or building societies;
- [(hh) for the purpose of enabling or assisting a body established by order under section 46 of the Companies Act 1989 to discharge its functions under Part II of that Act, or of enabling or assisting a recognised supervisory or qualifying body within the meaning of that Part to discharge its functions as such;]
- (i) for the purpose of enabling or assisting the Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland to discharge his functions under the enactments relating to industrial assurance;
- (j) for the purpose of enabling or assisting the Insurance Brokers Registration Council to discharge its functions under the Insurance Brokers (Registration) Act 1977;
- (k) for the purpose of enabling or assisting an official receiver to discharge his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a body which is for the time being a recognised

professional body for the purposes of section 391 of the Insolvency Act 1986 to discharge its functions as such;

- (l) for the purpose of enabling or assisting the Building Societies Commission to discharge its functions under the Building Societies Act 1986;
- (m) for the purpose of enabling or assisting the Director General of Fair Trading to discharge his functions under this Act;
- (n) for the purpose of enabling or assisting a recognised self-regulating organisation, recognised investment exchange, recognised professional body, or recognised clearing house to discharge its functions as such;
- (o) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties;
- [(oo) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the discharge by a public servant of his duties;]
- (p) for the purpose of enabling or assisting any person appointed or authorised to exercise any powers under [section 44 of the Insurance Companies Act 1982, section 447 of the Companies Act 1985,] section 94, 106 or 177 above [or section 84 of the Companies Act 1989] to discharge his functions;
- (q) for the purpose of enabling or assisting an auditor of an authorised person or a person approved under section 108 above to discharge his function;
- [(qq) for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions;]
- (r) if the information is or has been available to the public from other sources;
- (s) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
- (t) in pursuance of any Community obligation.

[(1A) In subsection (1)—

- (a) in paragraph (oo) "public servant" means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that paragraph by order of the Secretary of State; and
- (b) in paragraph (qq) "overseas regulatory authority" and "regulatory functions" have the same meaning as in section 82 of the Companies Act 1989.]

(2) Section 179 above shall not preclude the disclosure of information to the Secretary of State or to the Treasury if the disclosure is made in the interests of investors or in the public interest.

(3) Subject to subsection (4) below, section 179 above shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being [designated for the purposes of this subsection] by an order made by the Secretary of State to discharge any functions which are specified in the order.

(4) An order under subsection (3) above designating an authority for the purposes of that subsection may—

- (a) impose conditions subject to which the disclosure of information is permitted by that subsection; and
- (b) otherwise restrict the circumstances in which that subsection permits disclosure.

(5) Section 179 above shall not preclude the disclosure—

- (a) of any information contained in an unpublished report of the Tribunal which has been made available to any person under this Act, by the person to whom it was made available or by any person obtaining the information directly or indirectly from him;

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- (b) of any information contained in any notice or copy of a notice served under this Act, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from him;
- (c) of any information contained in the register kept under section 102 above by virtue of subsection (1)(e) of that section, by a person who has inspected the register under section 103(2) or (3) above or any person obtaining the information directly or indirectly from him.

(6) ...

(7) Section 179 above shall not preclude the disclosure of information by the Director General of Fair Trading or any officer or servant of his or any person obtaining the information directly or indirectly from the Director or any such officer or servant if the information was obtained by the Director or any such officer or servant for the purposes of or in the discharge of his functions under this Act (whether or not he was the primary recipient of the information within the meaning of section 179 above) and the disclosure is made—

- (a) for the purpose of enabling or assisting the Director, the Secretary of State or any other Minister, the Monopolies and Mergers Commission or any Northern Ireland department to discharge any function conferred on him or them by the Fair Trading Act 1973 (other than Part II or III of that Act), the Restrictive Trade Practices Act 1976 or the Competition Act 1980; or
- (b) for the purposes of any civil proceedings under any of those provisions;

and information shall not be treated as restricted information for the purposes of section 179 above if it has been made available to the public by virtue of this subsection.

(8) The Secretary of State may by order modify the application of any provision of this section so as—

- (a) to prevent the disclosure by virtue of that provision; or
- (b) to restrict the extent to which disclosure is permitted by virtue of that provision.

of information received by a person specified in the order pursuant to a Community obligation from a person exercising functions in relation to a collective investment scheme who is also so specified.

(9) An order under [subsection (1A)(a), (3) or (8)] above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

The words in square brackets in sub-s (1)(c), (p) were inserted, sub-s (1)(e) and the words in square brackets in sub-s (3), (9) were substituted, sub-s (1)(hh), (oo), (qq), (1A), were inserted, and sub-s (6) was repealed, by the Companies Act 1989, ss 75, 212, Sch 24.

The words in square brackets in sub-s (1)(f) were substituted by the Banking Act 1987, s 108(1), Sch 6, para 27(3).

Commencement. This section was brought into force on 15 November 1986 by the Financial Services Act 1986 (Commencement No 1) Order 1986, SI 1986/1940, made under s 211(1) post.

Partial commencement of amendments. Sub-s (1)(hh) above so far as it refers to a body established by order under s 46 ante, and sub-s (1)(c), (e) so far as they refer to the Companies Act 1989, Pt VII, have yet to be brought into operation by order made under the Companies Act 1989, s 215(2), this part of this title post.

Sub-s (1): Shall not preclude the disclosure of information. See also, as to the disclosure of information which would otherwise be prohibited for the purpose of enabling or assisting the Secretary of State, and persons appointed under or bodies established by this Act in the exercise of their functions under this Act, the Insurance Companies Act 1982, s 47A(1), (2A), (2B) (as substituted by s 182 and Sch 13, para 6 post), the Banking Act 1987, s 84, Vol 4, title Banking, the Companies Act 1985, ss 449, 451A, Vol 9, title Companies, the Companies Act 1989, s 87, this part of this title post, the Water Act 1989, s 174(2)(e), Vol 49, title Water, and the Electricity Act 1989, s 57(2)(c), Vol 15, title Electricity.

Secretary of State. See the note to s 142 ante.

Body administering a scheme under s 54; Bank of England; Chief Registrar of friendly societies; Director General of Fair Trading; public; Community obligation. See the notes to s 179 ante.

Deposit Protection Board. This board is constituted under the Banking Act 1987, s 50, Sch 4, Vol 4, title Banking.

Industrial Assurance Commissioner. As to this officer, see the Industrial Assurance Act 1923, s 2, Vol 19, title Friendly Societies.

Insurance Brokers Registration Council. This body is constituted under the Insurance Brokers (Registration) Act 1977, s 1, Schedule, Vol 22, title Insurance (Pt 1).

Building Societies Commission. This body is constituted under the Building Societies Act 1986, s 1, Sch 1, Vol 5, title Building Societies.

Recognised self-regulating organisation. Sub-s (1)(a) above and ss 181, 187, 192 and 200(4) post apply also in relation to recognised self-regulating organisations for friendly societies as defined by Sch 11, para 1, to this Act, Vol 19, title Friendly Societies (but subject to modifications in the case of ss 187 and 192); see s 140 and Schs 11, para 12(1), (3)-(5), in the same title.

Sub-s (2): Treasury; public interest. See the notes to s 148 ante.

Sub-s (7): Monopolies and Mergers Commission. This body is constituted under the Fair Trading Act 1973, s 4, Sch 3, Vol 47, title Trade and Industry (Pt 1).

Sub-s (9): Subject to annulment. See the note to s 142 ante.

Application. See the note to s 179 ante.

Definitions. For "collective investment scheme", see s 75 ante; for "designated agency", see s 114(3) ante; for "authorised person", "competent authority", "recognised clearing house", "recognised investment exchange", "recognised professional body", "recognised self-regulating organisation" and "the Tribunal", see s 207(1) post; for "transferable body", see Sch 11, para 28(4), to this Act, Vol 19, title Friendly Societies.

Companies Act 1989. For Pt II and s 46 of that Act, see Vol 8, title Companies; for Pt III of that Act, see Vol 8, title Companies, and this part of this title post; for ss 82, 84 and Pt VII of that Act, see this part of this title post. For "recognised supervisory body" and "recognised qualifying body" in Pt II of that Act, see ss 30(5), 32(4) of, and Sch 11, Sch 12, para 2(1) to, that Act, Vol 8, title Companies.

Banking Act 1987. See Vol 4, title Banking.

Insurance Brokers (Registration) Act 1977. See Vol 22, title Insurance (Pt 1).

Insolvency Act 1986, s 391. See Vol 4, title Bankruptcy and Insolvency.

Building Societies Act 1986. See Vol 5, title Building Societies.

Insurance Companies Act 1982, s 44. See Vol 22, title Insurance (Pt 2).

Companies Act 1985, s 447. See Vol 8, title Companies.

Fair Trading Act 1973; Restrictive Trade Practices Act 1976; Compensation Act 1980. See Vol 47, title Trade and Industry (Pt 1).

Order under this section. The Financial Services (Disclosure of Information) (Designated Authorities) Order 1986, SI 1986/2046, the Financial Services (Disclosure of Information) (Designated Authorities) (No 2) Order 1987, SI 1987/859, the Financial Services (Disclosure of Information) (Designated Authorities) (No 3) Order 1987, SI 1987/1141, the Financial Services (Disclosure of Information) (Designated Authorities) (No 4) Order 1988, SI 1988/1058, the Financial Services (Disclosure of Information) (Designated Authorities) (No 5) Order 1989, SI 1989/940, and the Financial Services (Disclosure of Information) (Designated Authorities) (No 6) Order 1989, SI 1989/2009 (all made under sub-s (3), (4) above and under the Companies Act 1985, s 449(1B), (1C), Vol 8, title Companies).

Up to 1 March 1991 no order had been made under sub-s (1A)(a) or (8) above.

For general provisions as to orders made by the Secretary of State, see s 205A post; and note also sub-s (9) above.

181 Directions restricting disclosure of information overseas

(1) If it appears to the Secretary of State to be in the public interest to do so, he may give a direction prohibiting the disclosure to any person in a country or territory outside the United Kingdom which is specified in the direction, or to such persons in such a country or territory as may be so specified, of such information to which this section applies as may be so specified.

(2) A direction under subsection (1) above—

- (a) may prohibit disclosure of the information to which it applies by all persons or only by such persons or classes of person as may be specified in it; and
- (b) may prohibit such disclosure absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in it;

and a direction prohibiting disclosure by all persons shall be published by the Secretary of State in such manner as appears to him to be appropriate.

(3) any person directing

(4) exercis paragraph 4 or part in sect (5) other

(6) pursu (7) under

(8) done citize corp

NOT. Cor 1986 (Sub See Pul Un Sub Sul Shi conv Su' 2. par Br Natie