

**Third Report of the Information Commissioner**

to the

**Joint Committee on  
Finance, Public Expenditure and Reform**

for the purpose of

**Review of Non-Disclosure Provisions**

in accordance with

**The Freedom of Information Act, 1997  
[section 32]**

**May 2013**

**Office of the Information Commissioner  
18 Lower Leeson Street, Dublin 2  
[www.oic.ie](http://www.oic.ie)**

**Phone: 01 6395689 Fax: 01 6395676 Email: [info@oic.gov.ie](mailto:info@oic.gov.ie)**

## Contents

<b>Foreword</b>	<b>2</b>
<b>Introduction</b>	<b>3</b>
<b>FOI: Principles &amp; Assumptions</b>	<b>5</b>
<b>Interaction of FOI Act &amp; Non-Disclosure Provisions</b>	<b>6</b>
<b>EU Law</b>	<b>8</b>
<b>Receipt of Reports from Departments</b>	<b>9</b>
<b>Comments on Reports of individual Departments: Approach</b>	<b>10</b>

### Departmental Reports\*

<b>Agriculture, Fisheries &amp; Food</b>	<b>11</b>
<b>Arts, Sport &amp; Tourism</b>	<b>13</b>
<b>Communications, Energy &amp; Natural Resources</b>	<b>14</b>
<b>Community, Rural &amp; Gaeltacht Affairs</b>	<b>16</b>
<b>Defence</b>	<b>17</b>
<b>Education &amp; Science</b>	<b>18</b>
<b>Jobs, Enterprise &amp; Innovation</b>	<b>21</b>
<b>Environment, Heritage &amp; Local Government</b>	<b>26</b>
<b>Finance</b>	<b>28</b>
<b>Foreign Affairs &amp; Trade</b>	<b>33</b>
<b>Health &amp; Children</b>	<b>34</b>
<b>Justice, Equality &amp; Law Reform</b>	<b>41</b>
<b>Social &amp; Family Affairs</b>	<b>46</b>
<b>An Taoiseach</b>	<b>47</b>
<b>Transport</b>	<b>49</b>

### Tables

<b>1: Existing Third Schedule to FOI Act - "Enactments excluded from application of Section 32"</b>	<b>53</b>
<b>2: Enactments recommended by Ministers for inclusion in Third Schedule</b>	<b>59</b>
<b>3: Enactments recommended by Ministers for exclusion from Third Schedule</b>	<b>61</b>

*\*The formation of the Government in March 2011 included re-assignment of functions between Departments. Given that this review was due to take place in 2009, that all but four of the reports were provided to the Joint Committee well within the tenure of the previous Government and that the statute book is accounted for in full in any event, for purposes of this report and so as not to subject Departments to the need to repeat their reports, this report is based on the departmental titles as they were at the date of submission of their respective reports.*

## **Foreword**

Section 32 of the Freedom of Information Act, 1997 (FOI Act) provides for the mandatory refusal of access to certain records whose disclosure is prohibited, or whose non-disclosure is authorised, by other enactments. Section 32 is a very important provision because it subordinates the access provisions of the FOI Act to all non-disclosure provisions in statutes except for those which are cited in the Third Schedule to the FOI Act.

Section 32 provides for review of its operations every five years and, for this purpose, in accordance with section 32(3), each Minister of the Government has provided a report to the Joint Committee on Finance, Public Expenditure and Reform on the enactments within their respective areas of governance which contain provisions prohibiting the disclosure or authorising the non-disclosure of records containing particular information. In accordance with section 32(4) of the FOI Act, each Minister has provided me with a copy of that report. Pursuant to section 32(5) of the FOI Act, I now present my opinions and conclusions relating to those reports.

*Emily O'Reilly*  
*Information Commissioner*  
*May 2013*

## **Introduction**

It is opportune that this report is being compiled within a context of the Government commitment to restore the Freedom of Information Act (FOI Act), a commitment which is being actioned by the Department of Public Enterprise and Reform at the time of writing. The indications are that restoration of the FOI Act will be supplemented with the extension of its First Schedule (Public Bodies) to bring additional public bodies within the scope of the FOI Act. I am pleased to note the significant work that has been carried out to date by the Department of Public Expenditure & Reform on the arrangements necessary to give effect to the commitments in the Programme for Government in relation to FOI.

The passing of the FOI Act in 1997 changed the relationship between members of the public and the State. For the first time, members of the public acquired a right of access to information in records held by public bodies and, in the case of personal information, a right to have that information corrected.

There are, inevitably, certain exceptions to that right of access. Section 32 of the FOI Act, which provides for mandatory refusal of access to a record where its disclosure is prohibited or its non-disclosure authorised by another enactment, is one of those exemptions. The mandatory refusal effect of section 32 is nullified if the enactment in question is included in the Third Schedule to the FOI Act (Enactments Excluded from Application of Section 32), viz.

*"(1) A head shall refuse to grant a request under section 7 if*

*(a) the disclosure of the record concerned is prohibited by any enactment (other than a provision specified in column (3) of the Third Schedule of an enactment specified in that Schedule), or*

*(b) the non-disclosure of the record is authorised by any such enactment in certain circumstances and the case is one in which the head would, pursuant to the enactment, refuse to disclose the record."*

Section 32 provides that its operation must be reviewed at five year intervals by the duly authorised Joint Committee of the Houses of the Oireachtas. Since the FOI Act was commenced in April 1998 two such reviews have been completed. The Joint Committee on Finance, Public Expenditure & Reform (the "Joint Committee") is mandated to review the operation of any provisions of any enactment (apart from those already specified in the Third Schedule) that authorise or require the non-disclosure of a record which might be the subject of an FOI request.

For the purpose of informing the Joint Committee's review process, section 32 also provides that each Minister of the Government must provide it with a report on the enactments within their area of governance that contain non-disclosure provisions. Ministers must specify whether, in their opinion, the provisions should be amended, repealed or allowed to continue in force. They must also comment, in relation to each provision, on whether it should be included in the Third Schedule. Each Minister must lay a copy of that report before each House of the Oireachtas and must also provide a copy to me, as Information Commissioner.

In keeping with the prescribed five year cycle the current review was due to have been carried out in 2009. However, as outlined on page 9, the reports of Ministers from individual Departments - the first step in the review process - were presented at varying dates between June 2009 and February 2012.

Section 32(5) of the FOI Act provides that I may furnish my opinions and conclusions in relation to the reports of Ministers. I have chosen to do so in the course of the two previous reviews and I understand that the Joint Committee will welcome my opinions and conclusions to inform the delayed review now in progress. It is open to the Joint Committee in its own right to include recommendations in relation to the amendment, the repeal or the continuance in force of any non-disclosure provision and its inclusion the Third Schedule of the FOI Act. The review process will be completed when, following its review, the Joint Committee provides its own report to each House of the Oireachtas.

## **Freedom of Information: Principles & Assumptions**

The principles and assumptions, on which the FOI regime is framed, are worth restating. The FOI Act presumes disclosure of information as the norm in speaking of "access to the greatest extent possible" in its Long Title.

### **Principles**

- Non-disclosure provisions must not be confused with confidentiality provisions.
- Non-disclosure provisions must be specific.
- Need for each non-disclosure provision must be clear.
- Non-disclosure provisions must be reviewed on a regular basis.
- Non-disclosure provisions emanating from EU Directives must be 'intra vires' those Directives and must not be magnified in transposing regulations into Irish statute.
- Non-disclosure provisions must be kept to a minimum.

### **Assumptions**

- Public bodies holding records covered by non-disclosure provisions may, or may not, be included in the First Schedule (subject to FOI in their own right).
- If not, there is no access mechanism through that public body. However, access may be sought where the records in question are held by a public body which is subject to FOI.
- Non-disclosure provisions are justified only where Part III of the FOI Act (Exempt Records) is not sufficient to protect the particular interests concerned.
- There are very few situations where Part III of the FOI Act does not provide appropriate protection for any interests concerned.
- The Official Secrets Act continues to protect against unauthorised disclosure of official information by civil servants.

## **Interaction of FOI Act & Non-Disclosure Provisions**

Fundamentally, the FOI Act provides for the granting of access, on request, to the greatest extent possible, to information held by public bodies, in a manner which is consistent with the public interest and the right to privacy.

In Part III, the FOI Act provides for a number of exemptions to that right of access. One of those exemptions is at section 32, the effect of which is to call for mandatory refusal of access to a record which contains information the disclosure of which is prohibited, or the non-disclosure of which is authorised, in any enactment, unless the particular enactment is included in the Third Schedule to the FOI Act. The interaction of the FOI Act with non-disclosure provisions in individual enactments is complex and difficult to track.

The reports of individual Ministers show that, since the FOI Act became law in April 1997, many new non-disclosure provisions have been introduced in individual enactments. Indeed, the non-applicability of the FOI Act is appearing as a standard component of many new Acts. During the course of the last section 32 review, I suggested in my report that the Joint Committee may wish to consider whether the effectiveness of the section 32 review process could be strengthened by means of an FOI audit procedure which would be incorporated at the drafting stage to any new non-disclosure provisions in the future. In practice, this would mean that the procedures around the drawing up of draft heads of a Bill would include assessment of its interaction with the FOI Act.

In my previous report, I also questioned whether the existing mechanism of a presumption that non-disclosure provisions in individual statutes override the FOI Act unless they are included in the Third Schedule might be converted to its opposite i.e. to a presumption that a non-disclosure provision is subservient to the FOI Act unless it is included in the Third Schedule. I would favour the latter as a more coherent approach which would be clearer, more focused and more user-friendly for all users of the FOI Act including FOI decision-makers.

It is curious that, rather than reducing in an FOI environment as might be expected, the number of non-disclosure provisions being introduced in individual enactments is increasing. Departments are reporting approximately 230 enactments containing non-disclosure provisions of which 50% became law since 1 January 1998. This means that as many non-disclosure provisions have been introduced since 1997 as were introduced in the preceding 75 years. In itself, this is a feature of post-FOI Act legislation which the Joint Committee may wish to address in its review and report.

Given my FOI Act mandate in relation to fostering and developing publication of information, it is important I would encourage a simple, coherent approach to the treatment of information in public bodies. This is crucial to all stakeholders and never more so than at a time of scarce resources. The FOI Act should not be amended in a piecemeal fashion; such an approach tends to favour sectional interests of particular public bodies at particular points in time rather than serving the overall coherence and cohesion of the FOI Act.

In my previous report, I suggested that the FOI Act could be strengthened by the creation of a Non-Disclosure Act which would accommodate all non-disclosure provisions currently housed randomly in individual enactments. Were this to be the case, non-disclosure provisions throughout statute could be rationalised and separated from the substantive content of the statute in question. Benefits would include:

- improved transparency,
- more coherence,
- standardisation of the approach to non-disclosure / secrecy provisions across Departments,
- more robust FOI decision-making,
- a more streamlined five year Joint Committee review procedure.

It is important to ensure that any amendments to the FOI Act itself, particularly where such amendments have a restricting effect, occur only after full consideration of the need for such restriction.

I recognise that the FOI Act is silent on consultation in relation to amendments to the FOI Act, however, it seems sensible to me from an operational viewpoint that consultation with my Office would occur when any amendment of the FOI Act is being contemplated. I am happy to report that my Office has recently been actively engaged with the Department of Public Expenditure and Reform in the drafting of legislation to restore the FOI Act in fulfilment of the Programme for Government.



## **EU Law**

Many statutory non-disclosure provisions derive from EU law. Given that EU law and domestic law operate concurrently, it is important to ensure that the inclusion of any non-disclosure provision in the Third Schedule does not compromise EU law. Ideally, any such provision should be applied in a context which acknowledges the existence and spirit of the FOI Act. In any event, they should not ever exceed the non-disclosure provisions of the EU law in question; neither should they confuse confidentiality provisions with non-disclosure provisions. In some instances, EU law may possibly place greater restrictions on access to information than those contained in the FOI Act or, indeed, the national legislation of other member states. It is equally the case that EU law on occasion takes account of Member State variations in rules relating to access to information. For instance, Council Directive 93/99/EEC, which deals with measures concerning the official control of foodstuffs, recognises that different member states may operate different rules. In Article 7.2 that Directive provides as follows:

*"Where a Member State has rules permitting free access by persons to information held by competent authorities, this fact must be revealed at the time of the request to another Member State or during the exchange of information if no such request occurs. If the sending Member State indicates that the information involves matters of professional or commercial secrecy, the receiving Member State shall ensure that the information is not divulged more widely than is provided under paragraph 1. If it is not possible for the receiving Member State to restrict the giving out of information in this way, it shall not be contrary to the terms of this Directive for the sending Member State to withhold the information."*

Generally, while I respect and accept the overall legislative constraints imposed by EU law, I believe that the spirit of the FOI Act should always be fostered to the greatest extent possible in domestic legislation.

**Dates of Receipt of Reports from Departments**  
**(30 June 2009 to 29 February 2012)**

	<b>Department</b>	<b>Date of Receipt</b>
1	Agriculture Fisheries & Food	1 December 2010
2	Arts, Sport & Tourism	07 August 2009
3	Communications, Energy & Natural Resources	1 December 2010
4	Community, Gaeltacht & Rural Affairs	31 July 2009
5	Defence	22 July 2009
6	Education & Science	02 September 2009
7	Enterprise, Jobs & Innovation	16 December 2011
8	Environment, Heritage & Local Government	30 November 2009
9	Finance	29 February 2012
10	Foreign Affairs & Trade	23 February 2012
11	Health & Children	04 November 2011
12	Justice, Equality & Law Reform	12 August 2009
13	Social & Family Affairs	11 August 2009
14	An Taoiseach	11 November 2009
15	Transport	30 June 2009

### **Comments on Reports of Individual Departments: Approach**

The following points explain how my report is structured:

1. Where a Department recommends that a non-disclosure provision be added to the Third Schedule, my commentary will not generally deal with that matter where I agree with the recommendation.
2. Where a Department recommends that a non-disclosure provision, not already included in the Third Schedule, should remain outside the Schedule, I will not generally comment further where I agree with that recommendation. Where I disagree with such a recommendation, my commentary will set out the grounds on which I recommend that the provision be included in the Third Schedule.

**Department of Agriculture Fisheries & Food**  
**(Report received 1 December 2010)**

The Department reports on nine non-disclosure provisions of which five are already included in the Third Schedule. The provisions which are already included are:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision already included in Third Schedule</b>
Bord Glas Act	No 1 of 1990	Section 23
Marine Institute Act 1991	No 2 of 1991	Section 15
Milk (Regulation of Supply) Act, 1994	No 25 of 1994	Section 16(1)
Bord Bia Act, 1994	No 22 of 1994	Section 26
Agriculture (Research, Training & Advice Act), 1988	No 18 of 1988	Section 14

The Department recommends that the following provision should be included in the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
Fisheries (Amendment) Act 1997	No 23 of 1997	Section 30

The Department recommends that the following non-disclosure provisions be excluded from the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
EC (Mutual Assistance as regards correct application of legislation on veterinary and zootechnical matters) Regulations, 1993	SI No 150 of 1993	Article 3(2)	Agree
EC (Authorisation, Placing on the Market, Use and Control of Biocidal Products) Regulations 2001	SI No 625 of 2001	Article 26	Disagree
EC (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) (amendment) (No. 2) Regulations 2005	SI No 224 of 2005	Article 11	Disagree

Article 3(2) of EC (**Mutual Assistance as regards correct application of legislation on veterinary and zootechnical matters**) **Regulation, 1993 (S.I. No. 150 of 1993)** is concerned with mutual assistance between Member States and the EU Commission to ensure the correct application of legislation on veterinary and zootechnical matters, I regard this as a provision which authorises, rather than prohibits, the release of certain information to other Member States or to the Commission. As such I would question its consideration in the context of section 32 in the first place and agree that it has no place in the Third Schedule.

Article 26 of the EC (**Authorisation, Placing on the Market, Use and Control of Biocidal Products**) **Regulations 2001** is a provision whereby, in applying for authorisation or registration of a biocidal product, an applicant may indicate "in writing to the competent authority the information provided in accordance with these Regulations that the applicant considers to be commercially sensitive and disclosure of which might harm the applicant industrially or commercially and which the applicant therefore wishes to be kept confidential from all persons other than the competent authorities of the Member States and the Commission." Its classification as a non-disclosure provision may not be appropriate. However, for the avoidance of doubt, I do not agree that it should be excluded from the Third Schedule. The related Council Directive (98/8/EC) includes a derogation in its article 19(1) which recognises the impact of Council Directive 90/313/EEC of 7 June 1990 on freedom of access to information on the environment. Given that the article 19 provision is already subject to the condition that it is without prejudice to this particular freedom of information mechanism, it follows that it should also be without prejudice to the FOI aspect. In my view, it should be included in the Third Schedule.

Article 11 of EC (**Authorisation, Placing on the Market, Use and Control of Plant Protection Products**) (**Amendment**) (**No 2**) **Regulations 2005 (S.I. No. 224 of 2005)**, is concerned with requests for confidentiality where industrial and commercial secrets might be attendant on applications for authorisation of a plant protection product. Again, its classification as a non-disclosure provision may not be appropriate. However, for the avoidance of doubt, I do not agree that it should be excluded from the Third Schedule. The related Council Directive (91/414/EC) includes a derogation in its article 14 which recognises the impact of Council Directive 90/313/EEC of 7 June 1990 on freedom of access to information on the environment. Given that the article 14 provision is already subject to the condition that it is without prejudice to this particular freedom of information mechanism, it follows that it should also be without prejudice to the FOI aspect. In my view, it should be included in the Third Schedule.

**Department of Arts, Sport & Tourism**  
**(Report received 7 August 2009)**

The Department reports on five non-disclosure provisions of which all but one are already included in the Third Schedule.

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision already included in Third Schedule</b>
Irish Film Board Act, 1980	No 36 of 1980	Section 18
Irish Horseracing Industry Act, 1994	No 18 of 1994	Section 17
National Tourism Development Authority Act, 2003	No 10 of 2003	Section 22
Arts Act, 2003	No 24 of 2003	Section 20

The Department recommends that the following provision should be included in the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
Irish Sports Council Act 1999	No 6 of 1999	Section 21

**Department of Communications, Energy & Natural Resources**  
**(Report received 1 December 2010)**

The Department reports on fourteen non-disclosure provisions of which seven are already included in the Third Schedule and a further four are recommended for inclusion. The Department recommends that three non-disclosure provisions continue to be excluded from the Third Schedule.

The following provisions are already included in the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision already included in the Third Schedule</b>
Gas Act 1976	No 30 of 1976	Section 20
Postal and Telecommunications Services Act 1983	No 26 of 1983	Section 37
Electricity Regulation Act 1999	No 23 of 1999	Section 13
Gas (Interim)(Regulation Act 2002	No 10 of 2002	Section 19
Communications Regulation Act 2002	No 20 of 2002	Section 24
Digital Hub Development Agency Act	No 23 of 2003	Section 27(5)
National Oil Reserves Agency Act 2007	No 7 of 2007	Section 24

The Department recommends that the following provisions should be included in the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
Sustainable Energy Act 2002	No 2 of 2002	Section 19
Turf Development Act 1998	No 250 of 1998	Section 32
Foyle and Carlingford Fisheries Act 2007	No 17 of 2007	Section 26
EC (Internal Market in Electricity) Regulations 2000	SI No 445 of 2000	Article 12

The Department recommends that the following non-disclosure provisions be excluded from the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Communications Regulation Act 2002	No 20 of 2002	Section 24A	Agree
Communications Regulation Act 2002	No 20 of 2002	Section 38C	Disagree
Electricity Regulation (Amendment) (Single Electricity Market) Act 2007	No 5 of 2007	Section 8	Agree

I recognise the role of section 24A of the **Communications Regulation Act 2002** in protecting whistle blowers for the purpose of encouraging disclosure of relevant information to the Commission for Communications Regulation and I note that the section applies despite any other enactment or rule of common law to the contrary. Accordingly, I agree that it is not appropriate for inclusion in the Third Schedule

Section 38C of the **Communications Regulation Act 2002** is concerned with the giving of evidence or documents to the Commission for Communications Regulation. Its classification as a non-disclosure provision may not be appropriate. However, for the avoidance of doubt, I do not agree that it should be excluded from the Third Schedule. I note that the provision expressly provides for the production of evidence or documents in public where appropriate. In my view, the safeguards in the FOI Act are sufficient to ensure the information would not be released inappropriately.

Section 8 of the **Electricity Regulation (Amendment) (Single Electricity Market) Act 2007** is a provision which restricts access to information in specific circumstances and I agree that it is not appropriate for inclusion in the Third Schedule.



**Department of Community, Rural & Gaeltacht Affairs**  
**(Report received 31 July 2009)**

The Department reports on four non-disclosure provisions, two of which are already included in the Third Schedule and two are recommended for continuing exclusion from the Third Schedule. The provisions already included are:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision already included in Third Schedule</b>
Údarás na Gaeltachta Act, 1979	No 5 of 1979	Section 15(1)
Western Development Commission Act, 1998	No 42 of 1998	Section 18

The provisions recommended for continuing exclusion from the Third Schedule are:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Dormant Accounts Act, 2001	No 32 of 2001	Section 26(2)	Disagree
Unclaimed Life Assurance Policies Act, 2003	No 2 of 2003	Section 24(2)	Disagree

The Department recommends exclusion of the non-disclosure provisions of the **Dormant Accounts Act, 2001** and the **Unclaimed Life Assurance Policies Act, 2003** on the basis that they are similar to the exemption at section 22 of the FOI Act which provides for mandatory refusal of access on the basis of legal professional privilege. I do not agree with the Department's view in this regard not least because section 22 of the FOI Act is neither connected to, nor dependent on, any other provision in statute. I take a view that both provisions should be included in the Third Schedule and that FOI requests for access to records of this nature should be decided on by reference to the totality of the FOI Act.

**Department of Defence**  
**(Report received 22 July 2009)**

The Department of Defence reports that there has been no change to the legislative position since it last reported to the Joint Committee in May 2004. The Department acknowledges my views as expressed in my previous report and explains that it is engaged with the Defence Forces Legal Service to determine the steps necessary to give effect to my recommendations while also ensuring that the important security and other considerations that apply to the Defence Forces are afforded the requisite protection. The Department undertook to contact the Joint Committee further with details of the course of action indicated following that engagement with the Defence Forces Legal Service. I have not been provided with any further information in this regard.

In my previous report, I expressed my view that paragraph 11(2) of Defence Forces Regulation A5 (relating to Courts of Inquiry) should be included in the Third Schedule because the existing blanket restriction on access was incompatible with the purpose of the FOI Act, as expressed in its Long Title, and because the FOI exemptions provided for any circumstance in which it might be appropriate to refuse access to such records.

**Department of Education & Science**  
**(Report received 02 September 2009)**

The Department reports on non-disclosure provisions in four enactments and recommends exclusion from the Third Schedule in each case:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Education Act, 1998	No 51 of 1998	Section 53	Disagree
Commission to Inquire into Child Abuse Act, 2000	No 7 of 2000	Sections 27, 31, 33 & 34	Agree
Ditto	Ditto	Section 28	Disagree
Residential Institutions Redress Act, 2002	No 13 of 2002	Section 28	Disagree
Ditto	Ditto	Sections 30 & 31	Agree
Grangegorman Development Act, 2005	No 21 of 2005	Section 31	Disagree

The Department reports that section 53 of the **Education Act, 1998** should continue in force and should continue to be excluded from the Third Schedule. The Department explains that the intention of the section 53 provision is to prevent the creation of crude "league tables" on school performance. The Department also points out that the impact of the restriction on the FOI Act was recognised by the Oireachtas when the Education Act became law in 1998, over a year after the passing of the FOI Act.

As I pointed out in my previous report, it is clear from the Supreme Court judgment in *Sheedy and the Information Commissioner*- [2005] IESC 35 [which ruled that when the Department used section 53, which is a discretionary provision, to refuse school inspection reports, that decision overruled any rights to access which might exist under the FOI Act] that the impact of section 53 extends well beyond the prevention of crude "league tables". The Supreme Court ruled that section 53, when invoked by the Minister, prohibits the disclosure of very general information about schools deriving from the inspection process. As I suggested in my last report, whether the Oireachtas intended this to be the case is open to question. In my view, serious consideration should be given to repealing section 53. For as long as it continues in force, it should be included in the Third Schedule to allow for full consideration of any FOI requests for access to school records.

The **Commission to Inquire into Child Abuse Act, 2000** (CICA Act) includes provisions that:

- prohibit, subject to limited exceptions, the disclosure of information provided to the Confidential Committee (section 27)
- a person cannot be obliged by law to disclose information provided to the Commission or the Investigation Committee, (section 28)

- an order for discovery will not be made against the Commission or the Committees in legal proceedings to which they are not a party (section 31)
- exempts personal information provided to the Commission, or one of its Committees, from the Data Protection Act, 1988 (section 33)
- restrict the application of the FOI Act in the case of records held by public bodies where access could prejudice the effectiveness of the Commission (section 34).

Overall, the Department's recommendations in this regard are predicated on the pre-existence of the FOI Act at the time of the enactment of the CICA Act. The Department equates this with acceptance by the Oireachtas that the CICA Act is outside the scope of the FOI Act. With particular regard to the prohibition on disclosure contained in section 27 of the CICA Act, I take account of the fact that the involvement of the Confidential Committee is a choice which is made by persons who do not wish to submit to the investigation process. I agree that the section 27 provision should remain in force and that it should not be included in the Third Schedule. However, it also seems to me that the prohibition on disclosure could be time modified to an extent which would, for example, allow archivists and historians to have access to such information in the future. The introduction of an expiry date - a "sunset clause" - would achieve this objective. Alternatively, subsection 5 could be considered for repeal, thus permitting the transfer of such records to the National Archives in the longer term. Either way, I hold the view that due account should be taken of the historical importance of such a body of records.

I agree with the Department's recommendations in relation to the non-inclusion in the Third Schedule of sections 31, 33 and 34 of the CICA Act.

Section 28 of the CICA Act provides for non-disclosure of information provided to the Commission or Investigation Committee (but not the Confidential Committee). There are two stated exceptions from this provision - disclosure to a member of An Garda Síochána and to the HSE. My view is that this non-disclosure provision should be added to the Third Schedule where, if necessary, the exemptions contained in Part III of the FOI Act would protect records containing information regarding the functions of the Commission and any Investigation Committee.

With regard to the **Residential Institutions Redress Act, 2002** (RIR Act), I note the Department's contention that the restrictions on the FOI Act were accepted by the Oireachtas when it passed the RIR Act. With regard to the prohibition on disclosure contained in section 28 of the RIR Act, I note the nature of the provision which creates an offence for the disclosure of any substantive information by any person, including an applicant for, or recipient of, an award under the RIR Act. In my view the section 28(6) provision should be repealed not least because it represents a level of statutory prohibition which, I believe, is excessive. It should be noted that, by way of contrast with section 27 of the CICA Act which provides for the disclosure of abuse to the Confidential Committee where a person chooses to do so, section 28 does not take the wishes of an applicant for redress into account. I recommend that the prohibition could at least be time modified to an extent which would, for example, allow archivists and historians to

have access to such information in the future. The introduction of an expiry date - a "sunset clause" - would achieve this objective. Alternatively, subsection 3(b) might be repealed, thus permitting the transfer of such records to the National Archives in due course. I also recommend, as an immediate step, that section 28 be added to the Third Schedule of the FOI Act.

Section 31 of the **Grangegorman Development Agency Act, 2005** prohibits the unauthorised disclosure of confidential information without the consent of the Agency. The Department reports that the intention of the provision is to provide that board members are prohibited from disclosing confidential information without the consent of the Board. Again, the Department reports that the provision was enacted after the passing of the FOI Act and therefore, that "the restriction on the Freedom of Information Acts, 1997 & 2003 was accepted by the Oireachtas" when it passed the Grangegorman Development Agency Act, 2005. I disagree. I note that the provision applies "save as otherwise provided by law" which, in my view, does not restrict the right of access under the FOI Act. For the avoidance of any doubt, I recommend that the provision be included in the Third Schedule where any FOI request for access to records containing such confidential information can be determined by reference to the totality of the FOI Act.

**Department of Jobs, Enterprise, & Innovation**  
**(Report received 16 December 2011)**

The Department reports on a total of eighteen enactments, some of which contain more than one non-disclosure provision.

The Department recommends the removal of four non-disclosure provisions from the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for removal from Third Schedule</b>
Industrial Relations Act 1946	No 26 of 1946	Section 22
Industrial Relations Act 1969	No 14 of 1969	Section 14
Industrial Relations Act 1990	No 19 of 1990	Section 25(6)
Competition Act 1991	No 24 of 1991	Paragraph 9 of Schedule

Section 32 of the FOI Act provides for the consideration of non-disclosure provisions which are currently contained in the Third Schedule. Section 32(2) provides for a review by the Joint Committee of any provisions of any enactment that authorise or require the non-disclosure of a record (other than a provision specified in the said column 3). It would appear, therefore, that section 32 does not provide a mechanism for reviewing the provisions currently contained in the Third Schedule. Accordingly, I have no comment to make on the Department's recommendations.

The Department recommends that the following non-disclosure provisions should be included in the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
Prices Act 1958	No. 4 of 1958	Section 25
National Standards Authority of Ireland Act 1996	No. 28 of 1996	Par. 5 of Second Schedule
Industrial Development (Science Foundation Ireland) Act 2003	No. 30 of 2003	Section 17
Industrial Development (Enterprise Ireland) Act 1998	No. 34 of 1998	Section 16

The Department recommends that the following enactments should be excluded from the Third Schedule.

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Patents Act 1992	No. 1 of 1992	Sections 28, 88, 94, 96 & 101	Agree
Patents Rules 1992	SI No 179 of 1992	Rules 23, 64 and 65	Agree
Trade Marks Act 1996	No. 6 of 1996	Sections 43, 70 & 91	Agree
Transnational Information and Consultation of Employees Act 1996	No. 20 of 1996	Section 15	Agree
Companies (Auditing and Accounting) Act, 2003	No 44 of 2003	Section 31	Disagree
Companies Act, 1990	No 33 of 1990	Section 21	Disagree
Company Law Enforcement Act, 2001	No 28 of 2001	Section 17	Disagree
Industrial Designs Act, 2001	No 39 of 2001	Sections 38(3), 39(2) & 39(5)	Disagree
Industrial Designs Regulations, 2002	SI No 280 of 2002	Regulation 31(2)	Disagree
Competition Act, 2002	No 14 of 2002	Sections 32, 22(4) & 21(3)	Disagree
Personal Injuries Assessment Board Act, 2003	No 46 of 2003	Section 73	Disagree
Safety Health and Welfare at Work Act 2005	No 10 of 2005	Section 74	Agree
Chemicals Act 2008	No 13 of 2008	Section 28	Disagree

In relation to section 31 (confidentiality of information) of the **Companies (Auditing and Accounting) Act, 2003**, the Department stresses the importance of the obligation of confidentiality on the directors, management, staff and advisers of the Irish Auditing and Accounting Supervisory Authority (IAASA), the limited circumstances in which information can be revealed and the parties to whom such information can be given. The view is that complainants will not come forward despite the protections of the FOI Act with regard to exempting information obtained in confidence from disclosure. While I recognise the concerns, I do not agree with them and favour the inclusion of the section 31 provision in the Third Schedule, not least to permit the application of a public interest test in certain circumstances.

The non-disclosure provision of the **Companies Act, 1990** relates to information obtained by the Director of Corporate Enforcement in the course of an investigation. The Department says that the provision should not be included in the Third Schedule. The reason given is that disclosure of such information via the FOI Act would represent an unwarranted public intrusion into a company's private affairs which could benefit competitors and adversely affect market position. Additionally, the Department says it could represent an unwarranted intrusion into the private affairs of any person named in an investigation and could also compromise a criminal investigation. Section 27 of the FOI Act provides that records containing commercially sensitive information are exempt records and section 23 does likewise for records concerning law enforcement and public safety information. I also note the Department's views on the probability that a large number of judicial review proceedings against the Director of Corporate Enforcement would follow the introduction of a "general provision allowing disclosure of material" and must correct the Department's conjecture that the inclusion of the provision in the Third Schedule would amount to a general provision allowing disclosure of material. Inclusion in the Third Schedule means no more than that a request for such information can be accepted and determined by reference to the FOI Act. I recommend that section 21 of the Companies Act, 1990 should be included in the Third Schedule.

The Department recommends that section 17 of the **Company Law Enforcement Act, 2001** (Disclosure of information) should be allowed to continue in force and that it not be included in the Third Schedule. Section 17 provides that "*Information obtained by virtue of the performance by the Director (of Corporate Enforcement) of any of his or her functions which has not otherwise come to the notice of the public, shall not be disclosed, except in accordance with law ....*". This construction means that section 17 provides for an exception to the general prohibition "in accordance with law" which would include the FOI Act in its totality. Nevertheless, and for the removal of doubt, I recommend that the provision be included in the Third Schedule.

Sections 38(3), 39(2) and 39(5) of the **Industrial Designs Act, 2001** and article 31(2) of the **Industrial Designs Regulations, 2002** provide that a proprietor of a design may defer publication of that design for 30 months. The overall purpose is to protect the confidentiality of commercially sensitive information, a matter which is recognised by the FOI Act. I do not generally favour duplication of effort and I would consider the exemptions in the FOI Act to provide very adequate safeguards in this area. I recommend that all four provisions be added to the Third Schedule.

Despite the inclusion of its predecessor (Competition Act 1991 - Par. 9 of Schedule) in the Third Schedule, the Department recommends that section 32 of the **Competition Act 2002** (Prohibition on unauthorised disclosure of information) be excluded. I disagree with this view. The only distinguishable difference between the provisions is that the 2002 provision entitles persons injured by a disclosure of information obtained by the Competition Authority pursuant to its powers to sue the person who made the disclosure. Exemptions for information of this nature are contained in sections 26, 27, 28 of the FOI Act. I recommend that section 32 of the Competition Act, 2002 should be included in the Third Schedule.



The Department also recommends that sections 22(4) and 21(3) of the **Competition Act 2002** be excluded from the Third Schedule. The former provides for the removal, prior to publication, of commercially sensitive information from determinations made by the Competition Authority following a full investigation of proposed mergers. The latter provides for the removal, prior to publication, of commercially sensitive information from determinations made by the Competition Authority following an initial investigation of a proposed merger and the Department. In both cases the Department maintains that their inclusion in the Third Schedule would render possible the granting of access to commercially sensitive information thus jeopardising the Authority's investigations on the basis that the interested parties and/or objecting third parties to proposals would be likely to resist (on legal grounds or otherwise) providing commercial information to investigations and that it would undermine the Authority's ability to fully assess whether the effect of a particular merger would be to substantially lessen competition in the State.

I do not agree with the Department in either case because it seems to me that the protection afforded by sections 26, 27 and 28 of the FOI Act to information of the nature in question is quite sufficient. I recommend that these provisions of the Competition Act 2002 should be included in the Third Schedule.

The **Personal Injuries Assessment Board Act, 2003** provides for the assessment, outside the courts system, of claims relating to personal injuries. Section 73 prohibits the disclosure of information obtained by any member of the Board or by any member of its staff, committee, adviser or consultant. The provision, which contains a qualified prohibition on disclosure, is prefaced with the term "Save as otherwise provided by law". My view is that this clearly includes the FOI Act and for that reason and for the avoidance of doubt, I recommend that section 73 should be included in the Third Schedule.

Section 74 of the **Safety Health and Welfare at Work Act 2005** is a provision which amends section 46 of the FOI Act (Restriction of Act) to exclude from its jurisdiction all records of the Health and Safety Authority relating to its enforcement functions. The Joint Committee should be aware that section 45 of the Safety, Health and Welfare at Work Act, 1989 (Restrictions on the disclosure of information) was included in the Third Schedule in 1997 and remained there until it was deleted by section 73(3) of the Safety, Health & Welfare at Work Act, 2005. Section 73(1) and (2) constituted the detail of the prohibition on unauthorised disclosure of confidential information, however, it did not include replacement of the provision removed from the Third Schedule.

The Department reports that the purpose of the prohibition on disclosure of information is to safeguard evidence collected by the Authority relating to prosecutions being considered by it arising from its enforcement functions which can include investigation of workplace accidents involving serious injury or death. The Department points to a close working relationship with An Garda Síochána in the matter of investigations which is reinforced by a Memorandum of Understanding. The Department also states that, prior to its removal in 2005, the inclusion of the

non-disclosure provision in the Third Schedule was "in practice, a barrier to the maximising of cooperation between the two bodies" which was "endangering the enforcement of occupational safety and health law". Given the history of the double measures employed at the time and my reference to this matter in my previous report, I find it quite unacceptable that the Department is now claiming that the FOI Act was endangering the enforcement of occupational safety and health law between 1997 and 2005. Nevertheless, as Section 74 provides that the FOI Act does not apply to records held or created by the Health and Safety Authority relating to its enforcement functions, the provision clearly has no place in the Third Schedule.

The Department recommends that section 28 of the **Chemicals Act 2008** (Prohibition on unauthorised disclosure of information) should not be included in the Third Schedule for now and that the position will be revisited at the next review opportunity in light of its operation. While, in circumstances where the FOI Act has a very specific mandatory exemption for records containing information of a commercially sensitive nature, I see little by way of justification of its non-inclusion on grounds that much of the information may be commercially sensitive. Accordingly, I recommend that the provision be included in the Third Schedule.

**Department of Environment, Heritage & Local Government**  
**(Report received 30 November 2009)**

The Department recommends that the following provisions should be included in the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
Genetically Modified Organisms (Contained Use) Regulations, 2001	SI No 73 of 2001	Article 9
Genetically Modified Organisms (Deliberate Release) Regulations, 2003	SI No 500 of 2003	Article 10

The provisions recommended for continuing exclusion from the Third Schedule are:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Electoral Act, 1997	No 25 of 1997	Section 14	Disagree
Radiological Protection Act, 1991	No 9 of 1991	Section 36(1)(d)	Disagree

The Department reports that the non-disclosure provision at section 14 of the **Electoral Act, 1997** should continue to be excluded from the Third Schedule. In my previous report I recommended that it should be included in the Third Schedule, I take account of the fact that the Constituency Commission is not prescribed as a public body for purposes of the FOI Act, therefore a right of direct application for access to its records does not exist. However, records of a Constituency Commission could be held in a prescribed public body and I believe that the provision should be included in the Third Schedule whereby any request for access could be considered by reference to the FOI Act in its totality.

The Department reports that section 36 of the **Radiological Protection Act, 1991** should continue to be excluded from the Third Schedule because it relates directly to obligations under the international convention for the physical protection of nuclear material. Section 36(1)(d) of the Radiological Protection Act, 1991 (which provides for the non-disclosure of confidential information that becomes available to a person while performing duties as a member of the Radiological Protection Institute of Ireland) has been included in the Third Schedule since the passing of the FOI Act in 1997. I am not aware of any circumstance where the inclusion of section 36(1)(d) has given rise to any negative consequences.

If it is the Department's intention that the remainder of Section 36 be excluded, then I disagree. The Department draws particular attention to the provisions of Article 6 of the Convention on the Physical Protection of Nuclear Material in so far as it provides that the confidentiality of any information received in confidence under the Convention shall be protected. In my view, the FOI Act, including the exemptions at Part III are more than adequate to take full account of these obligations. I recommend that the section 36 non-disclosure provision should be included in the Third Schedule.

**Department of Finance**  
**(Report received 29 February 2012)**

The Department's report covers the period from 2004 to 31 December 2010. Therefore, it covers the position of the Department of Finance before the establishment of the Department of Public Expenditure and Reform.

I note that two non-disclosure provisions are already included in the Third Schedule viz.

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision already included in Third Schedule</b>
National Treasury Management Act, 1990	No 18 of 1990	Section 14
Ordnance Survey Ireland Act 2001	No 43 of 2001	Section 23

The Department recommends that the following enactments should be excluded from the Third Schedule.

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Central Bank Act, 1942	No 22 of 1942	Section 33 AK	Agree
Ombudsman Act, 1980	No 26 of 1980	Section 9	Agree
Trustee Savings Bank Act, 1989	No 21 of 1989	Paragraph 15 of Second Schedule	Agree
Waiver of Certain Tax, Interest and Penalties Act, 1993	No 24 of 1993	Section 7	Agree
Taxes Consolidation Act, 1997	No 39 of 1997	Section 851A (as inserted by section 77 of the Finance Act 2011)	Agree
Various Double Taxation Relief Orders Various Double Taxation Agreements & Tax information Exchange Agreements	No. 39 of 1997 / No. 11 of 2007	Section 826(1) of the Taxes Consolidation Act 1997 / Section 35 of the Finance Act 2007	Agree
Ethics in Public Office Act, 1995	No 22 of 1995	Section 35	Disagree
Public Service Management Act, 1997	No 27 of 1997	Section 5(3)	Disagree

Comptroller & Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998	No 47 of 1998	Sections 16 & 22	Agree
National Pensions Reserve Fund Act, 2000	No 33 of 2000	Section 13	Disagree
National Development Finance Agency Act 2002	No 29 of 2002	Section 18	Disagree
Houses of the Oireachtas Commission Act 2003	No 28 of 2003	Section 16(4)(d)	Disagree
National Asset Management Agency Act 2009	No 34 of 2009	Section 202(2) & (5)	Disagree
Credit Institutions (Financial Support) Scheme 2008	SI No 411 of 2008	Paragraph 30 of Schedule - Terms of Scheme	Agree
Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009	SI No 490 of 2009	Paragraph 35 of Schedule - Terms of Scheme	Agree
Anglo Irish Bank Corporation Act, 2009	No 1 of 2009	Section 27(6)	Agree

Section 35 of the **Ethics in Public Office Act, 1995** is a provision which, with certain stated exceptions, prohibits disclosure of information. One such exception is disclosure pursuant to an order of a court. Other exceptions include disclosure of information in the public interest by a Minister of the Government. They also include a level of disclosure of information contained in a statement of interests, by the provider of such a statement, where that person considers that a conflict may exist between an interest disclosed, or not disclosed, in a statement of interests and the public interest. A further exception relates to the disclosure of information (non-specific) by a person, whether in the performance of their official functions or in the public interest. Such disclosure could be made to a Minister of the Government, the Secretary-General to the Government, a Committee of a House of the Oireachtas, the Standards in Public Office Commission or a person in a public body who has been determined by the Minister for Finance to be a relevant authority in relation to the occupiers of designated position in that body. Finally, where a person has been the subject of an investigation under the Ethics Acts, and the report does not contain a determination that a contravention of the Ethics Acts has occurred (which means that it would not be laid before either House of the Oireachtas), the information contained in the report may be disclosed. Given the safeguards of the FOI Act, and in light of the level of disclosure already provided for, I continue to hold the view section 35 of the Ethics in Public Office Act should be included in the Third Schedule.

Section 5(3) of the **Public Service Management Act, 1997** exempts any record containing preliminary strategy statements, and any related Ministerial directions, from the scope of the FOI Act for a period of five years from the date of creation. At the time of the first section 32 review in 1999, this five year moratorium was consistent with section 19 of the FOI Act relating to meetings of the Government. Following the 2003 amendment of section 19, the term 'Government' was extended to include committees of the Government which include committees

consisting solely of officials and section 19 became a mandatory exemption for records for a period of ten years from the date of creation.

I am not persuaded by the reasons put forward by the Department to support its recommendation. I do not accept that the protection of section 5(3) parallels the protection of section 19 of the FOI Act. It should be borne in mind that this line of reasoning amounts to a 'de facto' amendment of section 5(3) to extend the period of immunity of strategy statements from the application of the FOI Act to ten years also. It seems to me that strategy statements are the records of Departments rather than the records of Government. I cannot accept the Department's contention that section 5(3) parallels section 19 of the Comptroller and Auditor General (Amendment) Act, 1993 and section 15 (restriction on evidence etc. of certain persons) of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997. I note that the Department has cited section 16 (saver and restriction of Official Secrets Act, 1963) which I am presuming was an administrative error. Both these latter provisions restrict the expression of an opinion on Government policy. It is likely that any FOI request for access to material connected with the preparation of a strategy statement (now generally a published document) would be evaluated by reference to sections 20 (Deliberations of Public Bodies) and 21 (Negotiations of Public Bodies) of the FOI Act, both of which are sufficient to protect the legitimate interests of Departments in relation to this material. I believe that section 5(3) of the Public Service Management Act should be repealed because it is unnecessary given the protections in the FOI Act (sections 20 and 21 in particular). If the provision is not repealed, I recommend that it should be included in the Third Schedule to the FOI Act.

While I agree that section 16 of the **Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998**, which protects the privacy of certain meetings of committees, should not be included in the Third Schedule, section 22 is unnecessary given that it duplicates section 46(1)(c)(ii) of the FOI Act and should, therefore, be repealed.

Section 13 of the **National Pensions Reserve Fund Act, 2000**, which prohibits the unauthorised disclosure of confidential information, is prefaced with the clause "*Save as otherwise provided by law*". This indicates to me that the provision is not an absolute prohibition of the type envisaged by section 32(1) of the FOI Act to support the refusal of access to information under the FOI Act. Nonetheless, and for the removal of doubt, I recommend that it should be included in the Third Schedule. This will mean that the safeguards of the FOI Act relating to commercially sensitive information can be employed in the event that such information might be requested from a public body listed in the First Schedule. I also note that the National Pension Reserve Fund Commission is not listed as a public body in the First Schedule.

Section 18 of the **National Development Finance Agency Act, 2002** prohibits the unauthorised disclosure of confidential information. The provision allows for disclosure to the Board, to the Chief Executive Officer and to the Minister for Finance. The Department says that the provision should be excluded from the Third Schedule.

I cannot agree given that the nature of the confidential information in question is such as to fall clearly within the scope and safeguards of sections 26 and/or 27 of the FOI Act, viz.

*"(a) information that is expressed by the Board or the Minister to be confidential either as regards particular information or as regards information of a particular class or description, (b) commercial information in relation to contractors, consultants, providers of finance or any other person, and (c) proposals of a commercial nature or tenders submitted to the Agency by contractors, consultants or any other person."*

The role of the National Development Finance Agency (NDFA) in advising state authorities on the optimal means of financing infrastructure projects and the role of the National Treasury Management Agency in borrowing for the Exchequer, managing the national debt and administering a number of major funds including the National Pensions Reserve Fund is fundamental and important to the state. They should be subjected to the highest possible levels of transparency and accountability and should not be placed, de facto, outside the scope of the FOI Act. The Joint Committee may also wish to note that the comparable provision of the National Treasury Management Agency Act, 1990 (section 14) is included in the Third Schedule.

Finally, section 18 of the NDFA Act is prefaced with the clause "*Save as otherwise provided by law*". This is evidence that the nature of the provision is less than that envisaged by section 32(1) of the FOI Act which could be relied upon to refuse access to information under the FOI Act. I recommend that it should be included in the Third Schedule which, if required, will mean that the safeguards of the FOI Act relating to commercially sensitive information can be applied.

The Department describes section 16(4)(d) of the **Houses of the Oireachtas Commission Act 2003** as a provision imported from the Public Service Management Act, section 5(3) (see reference above). My views on this provision are identical and I disagree with the Department and recommend that it should be included in the Third Schedule.

In explaining why elements of the disclosure of confidential information provision of the **National Asset Management Agency Act 2009** should remain outside the Third Schedule and, thereby, outside the reach of the FOI Act, the Department points out that confidential information is defined to cover commercially sensitive information on the part of a client of NAMA or of NAMA itself which has the capacity to impact on the financial interests of the State. I hold the view that the FOI Act in its totality has full capacity to take cognisance of commercially sensitive information while also taking account of the public interest. I do not accept that the protection of commercially sensitive information would be at all diminished by the inclusion of section 202(2) in the Third Schedule.

The relevant provisions of **Credit Institutions (Financial Support) Scheme 2008 and Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009** - are similarly worded and appear to me to be disclosure provisions rather than non-disclosure provisions. As such, my view is that they do not belong within the parameters of consideration for purposes of section 32.



The Department identifies section 27(6) of the **Anglo Irish Bank Corporation Act 2009** as a non-disclosure provision and recommends that it not be included in the Third Schedule. Section 27(6) provides, in relation to a report by "the Assessor" that "The Minister may omit from the published report any evidence or material if including that evidence or material would disclose commercially sensitive information or would otherwise be contrary to the public interest." I do not agree that this is a non-disclosure provision and hold the view that its consideration for purposes of section 32 is inappropriate.

**Department of Foreign Affairs & Trade**  
**(Report received 23 February 2012)**

The Department reports that it does not have primary responsibility for any enactments containing provisions authorising or requiring the non-disclosure of records.

The Department has further advised that the Ireland-United States Commission for Educational Exchange ("Fulbright Commission") which comes under its aegis does not have primary responsibility for any enactments containing provisions authorising or requiring the non-disclosure of records.

**Department of Health & Children**  
**(Report received 04 November 2011)**

The Department reports on 59 non-disclosure provisions, 29 of which are recommended for exclusion from the Third Schedule.

I note the Department's view that 24 non-disclosure provisions which are already included in the Third Schedule should be retained there and that a number of non-disclosure provisions have been repealed and/or the functions transferred out of the Department.

The 24 non-disclosure provisions which are already included in the Third Schedule are:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
Health Act 2007	No 23 of 2007	Section 84
Health (Repayment Scheme) Act 2006	No 17 of 2006	Section 12(4)
Irish Medicines Board (Miscellaneous Provisions) Act 2006	No 3 of 2006	Section 25
National Treatment Purchase Fund Board (Establishment) Order 2004	SI 179/2004	Article 16
Health Research Board (Establishment) Order 1986	SI 279/1986	Article 23
EC (Amendment of Cruelty to Animals Act 1876) Regulations 2002	SI 566/2002	Article 12(C)(1)
Public Health (Tobacco) Act 2002	No 6 of 2002	Section 20(1)
EC (In Vitro Diagnostic Medical Devices) Regulations 2001	SI 304/2001	Articles 17(4)(c) & 20
EC (Medical Devices)(Amendment) Regulations 2001	No 444/2001	Articles 12 & 24(a)
Pre-Hospital Emergency Care Council (Establishment) Order 2000	No 109/2000	Article 35
National Council for the Professional Development of Nursing and Midwifery (Establishment) Order 1999	No 376/1999	Article 25

St James Hospital Board (Establishment) Order 1971 (Amendment) Order 1998	SI 538/1998	Article 8
Food Safety Authority of Ireland Act 1998	No 29 of 1998	Section 43(1)
The National Social Work Qualifications Board (Establishment) Order 1997	SI 97/1997	Article 37
Voluntary Health Insurance (Amendment) Act 1996	No 4 of 1996	Section 8(1)
Irish Medicines Board Act 1995	No 29 of 1995	Section 23(1)
EC (Active Implantable Medical Devices) Regulations 1994	SI 253/1994	Article 20(1)(c)
Health Insurance Act 1994	No 16 of 1994	Section 34(1)
EC (Recognition of Medical Qualifications) Regulations 1976	SI 288/1976	Article 8(b)
Health Service Regulations 1971	SI 105/1971	Article 5(1), (2)
Health Act 2004	No 42 of 2004	Section 26
Nursing Homes (Care and Welfare) Regulations 1993	SI 226/1993	Article 20
National Haemophilia Council (Establishment) Order 2004	SI 451/ 2004	Article 23
St. James Hospital Board (Establishment) Order 1971	SI 187/1971	Article 29

The Department recommends that the following non-disclosure provisions should be included in the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
Health Insurance (Amendment) Act 2001	No 17 of 2001	Section 9 (inserts 12A)
Health Insurance (Amendment) Act 2007	No 3 of 2007	Section 3 (amends 12A)
Health Insurance (Miscellaneous Provisions) Act 2009	No 24 of 2009	Section 9 (inserts 7G)
Nursing Homes Support Scheme Act 2009	No 15 of 2009	Section 45(4)
Health Act 2004	No 42 of 2004	Regs 2006 - 8(7) and 14(6)
Pharmacy Act 2007	No 20 of 2007	Section 11 of Schedule 1

The Department recommends that the following non-disclosure provisions should be excluded from the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
EC (Active Implantable Medical Devices)(Amendment) Regulations 2009	SI 109/2009	Article 1.6 of Schedule 7	Disagree
EC (Medical Devices)(Amendment) Regulations 2009	SI 110/2009	Article 1.2 of Schedule 10	Disagree
Recognition of the Professional Qualifications of Nurses and Midwives (Directive 2005/36/EC) Regulations 2008	SI 164/2008	Article 9(7)	Disagree
Recognition of the Professional Qualifications of Dentists (Directive 2005/36/EC) Regulations 2008	SI 263/2008	Article 11(7)	Disagree
EC (Recognition of Professional Qualifications relating to the Profession of Pharmacist )(No 2) Regulations 2008	SI 489/2008	Article 10	Disagree
Medical Practitioners Act 2007	No 25 of 2007	Section 14(4)	Disagree
Ditto	Ditto	Section 56(2)	Disagree
Ditto	Ditto	Section 62(5)	Disagree
Ditto	Ditto	Sections 95(1) & (3)	Disagree
Pharmacy Act 2007	No 20 of 2007	Section 13(3)	Disagree
Pharmacy Act 2007	Ditto	Section 37(7)	Disagree
EC(Human Tissues and Cells Traceability Requirements, Notification of Serious Adverse Reactions and Events and Certain Technical Requirements) Regulations 2007	SI 598/2007	Schedule 1, Part E, Section 8	Disagree

Hepatitis C Compensation Tribunal (Amendment) Act 2006	No 22 of 2006	Section 4	Agree
Hepatitis C Compensation Tribunal (Insurance Scheme for Relevant (Claimants) (Amendment) Regulations 2008	SI 364/2008	Included with section 4 of the Hepatitis Compensation Tribunal (Amendment) Act 2006	Agree
Hepatitis C Compensation Tribunal (Insurance Scheme for Relevant Claimants) Regulations 2007	SI 31/2007	Included with section 4 of the Hepatitis Compensation Tribunal (Amendment) Act 2006	Agree
EC (Clinical Trials on Medicinal Products for Human Use) (Amendment no 2) Regulations 2006	SI 374/2006	Articles 4(c) and Part 2 Article 11	Disagree
EC (Quality and Safety of Human Tissues and Cells) Regulations 2006	SI 158/2006	Regulation 18	Disagree
Health and Social Care Professionals Act 2005	No 27 of 2005	Section 46(2)	Disagree
Ditto	Ditto	Section 55(5)	Disagree
EC (Quality and Safety of Human Blood and Blood Components) Regulations 2005	SI 360/2005	Regulation 15	Disagree
Children (Family Welfare Conference) Regulations 2004	SI 549/2004	Articles 6(4) & (5)	Disagree
Civil Registration Act 2004	No 3 of 2004	Section 35	Agree
Children Act 2001, Part II	No 24 of 2001	Section 235	-
Dentists Act 1985	No 9 of 1985	Section 38(5)	Disagree
Nurses Act 1985	No 18 of 1985	Section 38(5)	Disagree
EC (Official Control of Foodstuffs) Regulations 2010	SI 117/2010	Art. 13(3)	Disagree
Adoption Act 2010	No 21 of 2010	Section 86	Agree
Health Act 2004	No 42 of 2004	Section 30	Disagree

With general regard to regulations which transpose EU Directives, the Department, in outlining its position, takes the view that EU Directives are paramount to domestic legislation, that these provisions do no more than implement EU law and that it is not appropriate to include any of them in the Third Schedule.

My view is that, by and large, such non-disclosure provisions should be included in the Third Schedule, where the protections and exemptions of the FOI Act can be applied unless the source EU Directive explicitly prohibits disclosure in any circumstance. The Department refers to obligations of confidentiality deriving from EU Directives and it is important to bear in mind that a confidentiality provision does not equate to a non-disclosure provision. The FOI Act, at section 26, provides a mandatory exemption for information obtained in confidence unless, in certain circumstances, there is a greater public interest in granting access to records containing information obtained in confidence than there is in refusing that access. Section 26 is a robust exemption and it is unnecessary to seek to rely on the dis-application of the FOI Act to such information rather than rely on the safeguards built into the FOI Act which have been shown to support FOI decision-making on such information. I cannot agree with the continuation of the blanket prohibition as proposed and recommend that the regulations be included in the Third Schedule.

The Department states that section 14(4) of the **Medical Practitioners Act 2007** provides that the FOI Act shall not apply to draft or unapproved corporate plans prepared by the Medical Council for a period of five years. This is reflective of other provisions in legislation e.g. section 5(3) of the Public Service Management Act, 1997. I hold the view that the said section 14(4) provision should be repealed or at least included in the Third Schedule, not least because the FOI Act contains sufficient exemptions - at sections 20 and 21 for example - to protect such information from disclosure where appropriate. I also regard the determination of access by reference to the greater public interest as an important consideration in the event of an FOI request for records containing information of this nature.

Section 56(2) provides for the retention from inspection or publication of contact information of registered medical practitioners in the interests of their personal security. In my view, the relevant safeguards in the FOI Act are sufficiently robust to protect such information from release where the personal security of the practitioners is at issue. Accordingly, I recommend that the provision be included in the Third Schedule.

Section 62(5) deals with informal mediation in the course of investigating a complaint. I disagree with the Department's view that that this provision should not be included in the Third Schedule. Section 21 of the FOI Act provides for the protection of information whose release could reasonably be expected to prejudice the effectiveness of processes of the type described by the Department. I recommend that the provision be included in the Third Schedule.

Section 95(3) provides that the FOI Act shall not apply to a record relating to any professional competence scheme. While I acknowledge the Department's argument that it would be premature to consider altering the status of this provision until such time as the schemes are in operation for some time and capable of being reviewed, I hold the view that the FOI Act should apply to such records not least because it would mean that the compelling public interest considerations in granting/refusing access could also be evaluated.

The Department puts forward the same reasons to support the non-inclusion of sections 13(3) and 37(7) of the **Pharmacy Act 2007** relating to the retention from inspection or publication of

contact information of registered pharmacy practitioners in the interests of their personal security and mediation in the course of investigating a complaint; my position is as outlined in the previous paragraph in relation to the Medical Practitioners Act. I recommend that the provisions be included in the Third Schedule

With regard to section 4 of the **Hepatitis C Compensation Tribunal (Amendment) Act 2006** and its associated regulations I accept that the very confidential nature of the information relating to claimants supports exclusion from the Third Schedule.

The Department's argument for excluding sections 46(2) and 55(5) of the **Health and Social Care Professionals Act 2005** from the Third Schedule are the same as those presented for excluding sections 56(2) and 62(5) of the Medical Practitioners Act 2007. For the same reasons as I have outlined above, I recommend that the provisions be included in the Third Schedule.

The Department recommends that subsections 4 and 5 of Article 6 of **Children (Family Welfare Conference) Regulations 2004** should be excluded from the Third Schedule. The provisions seek to protect the confidentiality of information obtained at family welfare conferences. I hold the view that the safeguards contained in the Act, sections 26 and 28 in particular, are sufficiently robust to protect such information from disclosure, where appropriate. I recommend that the provisions be included in the Third Schedule

I understand that section 235 of the **Children Act 2001** has been repealed in accordance with section 47 of the Child Care (Amendment) Act 2011.

Sections 38(5) of the **Dentists Act, 1985** and the **Nurses Act, 1985** respectively concern information relating to Fitness to Practise enquiries. Notwithstanding the Department's view that both provisions should remain outside the Third Schedule in anticipation of modern legislation to include parallel mechanisms for informal mediation and competence assurance schemes, I have previously indicated that both provisions should be included in the Third Schedule, along with any new non-disclosure provisions in these areas.

Section 86 of the **Adoption Act 2010** provides that the index to make traceable the connection between each entry in the Adopted Children Register and the corresponding entry in the Register of Births shall not be given to any person except by order of a court or the Adoption Authority. I agree with the Department's recommendation that the provision should be excluded from the Third Schedule.

Section 30 of the **Health Act 2004** imposes a five year moratorium on disclosure for draft or unapproved Corporate Plans prepared by the HSE. The Department recommends that it be excluded from the Third Schedule. I do not agree; I hold the view that the FOI Act should apply



to such records not least because it would allow for assessment of such plans by reference to the exemptions of the FOI Act and it would mean that the public interest considerations in granting/refusing access could also be evaluated.

**Department of Justice, Equality & Law Reform**  
**(Report received 12 August 2009)**

The Department reports on twenty two non-disclosure provisions of which all but two are currently excluded from the Third Schedule. A third provision is now being recommended for inclusion.

The non-disclosure provisions already included in the Third Schedule are:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision already included in Third Schedule</b>
Official Secrets Act, 1963	No 1 of 1963	Sections 4, 5 & 9
Employment Equality Act, 1977	No 16 of 1977	Section 43(5)

The Department recommends that the following non-disclosure provisions should be excluded from the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Censorship of Films Act, 1923	No 23 of 1923	n/a	Agree
Censorship of Films Act, 1925	No 21 of 1925	n/a	Agree
Censorship of Publications Act, 1929	No 21 of 1929	n/a	Agree
Censorship of Films Act, 1930	No 13 of 1930	n/a	Agree
Censorship of Publications Act, 1946	No 1 of 1946	n/a	Agree
Censorship of Films (Amendment) Act, 1970	No 7 of 1970	n/a	Agree
Censorship of Films Act, 1992	No 29 of 1992	n/a	Agree
Video Recordings Act, 1989	No 22 of 1989	n/a	Agree
Registration of Title Act, 1964	No 16 of 1964	Section 107	Agree
Land Registration Rules, 1972	SI 230 of 1972	Rule 188	Agree

Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993	No 10 of 1993	Section 10	Agree
Ditto	Ditto	Section 12	Disagree
Refugee Act, 1996	No 17 of 1996	Section 19	Disagree
Criminal Assets Bureau Act, 1996	No 31 of 1996	Sections 10 & 11	Agree
Employment Equality Act, 1998	No 21 of 1998	Section 97(2)	Disagree
Criminal Justice (Location of Victims Remains) Act, 1999	No 9 of 1999	Section 9	Agree
Equal Status Act, 2000	No 8 of 2000	Section 36(2)	Agree
Children Act, 2001	No 24 of 2001	Sections 32 & 44	Agree
Data Protection (Amendment) Act, 2003	No 6 of 2003	Paragraph 10 of Second Schedule	Agree
Independent Monitoring Commission Act, 2003	No 40 of 2003	Section 9	Agree
Private Security Services Act, 2004	No 12 of 2004	Section 18 & Par. 9 of Part 1 of Schedule 2	Disagree
Legal Services Ombudsman Act 2009	No 8 of 2009	Sections 17, 35(1), 35(2) & 36(b)	Agree

The various censorship provisions (1 to 8 of preceding table refers) described by the Department prohibit the sale and distribution of certain books, films and videos. Arguably, they are not non-disclosure provisions as captured by section 32 of the FOI Act. In any event, I do not believe that the FOI Act is an appropriate mechanism for dealing with the issue of censorship. Accordingly, I agree that they should not be included in the Third Schedule.

The Department includes section 107 of the **Registration of Title Act, 1964** and Rule 188 of the **Land Registration Rules, 1972**. Given that both provisions are concerned with "searches of registers and maps" and "inspection of filed documents and obtaining copies thereof, it is unclear as to why they have been regarded as non-disclosure provisions by the Department. My view is that neither falls for consideration in the context of the Third Schedule.

Section 10 of the **Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993** contains provisions relating to certain proceedings and evidence. The Department has explained that the purpose is to preserve the confidentiality of the interception system in any such proceedings and that the Minister is of the view that it should not be changed in any way. I agree with this position.

Section 12 of the same Act provides for restriction on disclosure of the existence of authorisations (to intercept) and of matter intercepted to the extent that the Minister considers necessary for the prevention or detection of serious offences, or in the interests of the security of the State. The Department recommends that the provision should continue to be excluded from the Third Schedule because the confidentiality of the interception system could be affected were the existence of an authorised interception to be disclosable.

Section 23 of the FOI Act provides for the refusal of access to records if doing so could reasonably be expected to prejudice or impair lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property. Section 24 (security, defence and international relations), to take a further example, provides that a head may refuse to grant access to records which could reasonably be expected to have an adverse effect on the security or defence of the State. Both sections also provide that, where it might be considered appropriate in order to preserve the integrity of the information concerned, a head shall not disclose whether or not the record/s exist. This constitutes robust protection for records of the nature covered by the section in question. My concern is that, if this provision is not included in the Third Schedule, the limited public interest test contained in section 23(3) of the FOI Act, cannot be exercised. Therefore, I cannot agree with the Department and recommend that it should be included in the Third Schedule.

The Department has recommended, in relation to section 19 of the **Refugee Act, 1996**, which provides for the confidentiality of the identity and nationality of applicants for asylum, that no changes should be made. This includes its continued omission from the Third Schedule. Given the very strong protections in sections 26 and 28 of the FOI Act, I cannot see good grounds for excluding the provision from the Third Schedule. I recommend that section 19 be added to the Third Schedule.

The Department reports on Section 97(2) of the **Employment Equality Act, 1998** and states that, as the Equality Tribunal is not an FOI prescribed public body, the provision should not be included in the Third Schedule on those grounds alone. I disagree with that viewpoint, not least because it is possible that such records might be held by a First Schedule public body and should be open to consideration by reference to the FOI Act, if required. I recommend that the provision should be included in the Third Schedule.

The Department recommends that no change should be made to section 9 of the **Criminal Justice (Location of Victims Remains Act), 1999**. As this provision amends section 24 of the FOI Act relating to security, defence and international relations and includes "matters relating to the functions of the Independent Commission for the location of Victims remains within the meaning of the Criminal Justice (Location of Victim's Remains) Act, 1999" at section 24(1)(e) of the FOI Act, the issue of its inclusion in the Third Schedule does not arise.

Section 36(2) of the **Equal Status Act, 2000** prohibits the disclosure or publishing, except in stated circumstances, of information obtained for the purposes of any investigation, mediation,

hearing or inquiry. Contravention of section 36(2) constitutes an offence. Given the nature of such information which is acquired for a specific quasi-judicial purpose and the fact that the excepted circumstances are clearly stated and comprehensive, I agree that inclusion in the Third Schedule would not be appropriate. I also have regard to the fact that the investigation / examination / audit function of comparable bodies is taken outside the scope of the FOI Act by inclusion in section 46.

The confidentiality provisions in section 32(7) of Part 4 of the **Children Act, 2001** (Diversion Programme), protects information obtained while participating as a member of a case conference on a child who has been admitted to the Diversion Programme which is aimed at avoiding the creation of a criminal record. Breach of that confidentiality creates an offence. Section 44 relates to the Committee appointed by the Minister to monitor the effectiveness of the Diversion Programme. Section 44(10) provides that, subject to the FOI Act, information so obtained shall not be disclosed, again under pain of creation of an offence. The reference to the FOI Act is, presumably, intended to apply to any records of the Committee which might be held by a public body, e.g. the Department. I agree with the Department that neither provision should be included in the Third Schedule.

**The Data Protection (Amendment) Act, 2003** which inserted paragraph 10 in Second Schedule to the Data Protection Act, 1988 thereby introducing a duty of confidence on the Data Protection Commissioner and on the staff of the Office in the case of confidential information obtained in the course of their duties, a duty which outlives their actual tenure of office/employment. It takes account of Article 28.7 of Data Protection Directive 95/46/EC. I agree with the Department that its inclusion in the Third Schedule would not be appropriate.

With regard to section 9 of the **Independent Monitoring Commission Act, 2003**, the Department recommends that no change should be made. I agree with these views. I note that this Act also amends section 24 of the FOI Act relating to security, defence and international relations and, at section 24(2)(a)(iv) includes information relating to "the function of the Independent Monitoring Commission (within the meaning of the Independent Monitoring Commission Act, 2003)" as a category of record to which access may be refused in circumstances where adverse effect could reasonably be expected. In these circumstances also, the issue of its inclusion in the Third Schedule to the FOI Act does not arise.

The non-disclosure provisions of the **Private Security Services Act, 2004** relate to the Private Security Authority (PSA) which was established in October 2004 with a brief to control and supervise individuals and firms providing private security services and to investigate complaints against them. Section 18 provides that, without the consent of the Authority, unless otherwise provided by law, information obtained by virtue of the work of the Authority cannot be disclosed. Similarly, members of the Private Security Appeals Board, and its Secretary, are prohibited from disclosing information obtained in the course of their duties. In each case, the

Department has recommended that no changes should be made to the provisions and that the provisions be excluded from the Third Schedule.

I hold a view that there is a compelling public interest dimension in the regulatory environment surrounding the private security industry. Accordingly, I would have anticipated that the PSA would have been prescribed for purposes of FOI and that the non-disclosure provisions of the Private Security Services Act would be recommended for inclusion in the Third Schedule. In any event, section 18 of the Private Security Services Act, being prefaced with "*Save as otherwise provided by law, ...*" may mean that the FOI Act overrides the prohibition on disclosure where that information was held by a public body within remit, e.g. the Department itself. However, it would be preferable to bring the provision within the scope of the FOI Act by its inclusion in the Third Schedule.

Finally, the Department reports on the **Legal Services Ombudsman Act 2009**, recommends no change in the provisions at section 17 (Appearance before other Committees of Houses of the Oireachtas), section 35 (Confidentiality of information) and section 36 (Amendment of Freedom of Information Act 1997). It appears to be the Department's intention that these provisions should be excluded from the Third Schedule. If that is the case, I agree.

**Department of Social & Family Affairs**  
**(Report received 11 August 2009)**

The Department reports that the following non-disclosure provisions are already included in the Third Schedule.

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision already included in Third Schedule</b>
Pensions Act, 1990	No 25 of 1990	Sections 24 & 145
Comhairle Act 2000	No 1 of 2000	Section 18

The Department reports further on three provisions which are not included in the Third Schedule with recommendations that the exclusions be continued in each case.

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Adoption Act 1952	No 25 of 1952	Sections 22(5)	-
Civil Registration Act 2004	No 3 of 2004	Section 62(1)	Agree
Vital Statistics and Births, Deaths and Marriages Registration Act 1952	No 8 of 1952	Section 2(5)	-

The **Adoption Act 1952** was repealed in full by the **Adoption Act 2010**. The Department of Health and Children has made recommendations in relation to section 35 of the **Civil Registration Act 2004** which replaced section 22(5) of the **Adoption Act 1952** (page 37 of this report refers).

Section 62(1) of the **Civil Registration Act 2004** provides that nobody other than the Ard-Chláraitheoir or a member of his/her staff may search the register of stillbirths and it also provides for the issue in certain circumstances, to certain people, of entries from that register. While I would question its categorisation as a non-disclosure clause in the first instance, I agree with the Department's view that it has no place in the Third Schedule.

I note that the **Vital Statistics and Births, Deaths and Marriages Registration Act 1952** was repealed in full by section 4 of the Civil Registration Act 2004. In these circumstances, it is not appropriate to consider the Department's recommendation further.

**Department of An Taoiseach**  
**(Report received 11 November 2009)**

The Department recommends (for the second time) the inclusion of the following provision in the Third Schedule.

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
National Archives Act, 1986	No 11 of 1986	Section 8(4)

The Department reports that, while the Minister for Arts, Sport and Tourism is largely responsible for the **National Archives Act, 1986**, the Taoiseach has responsibility for the secrecy provision contained in section 8(4) which provides that:

*"An officer of a Department of State authorised for the purpose of this subsection may, with the consent of an officer of the Department of the Taoiseach so authorised (except in relation to particular Departmental records, or a particular class or classes of Departmental records prescribed in accordance with subsection (11), which are more than 30 years old and are specified in the certificate, that to make them available for inspection by the public-*

*(a) would be contrary to the public interest, or*

*(b) would or might constitute a breach of statutory duty, or a breach of good faith on the ground that they contain information supplied in confidence, or*

*(c) would or might cause distress or danger to living persons on the ground that they contain information about individuals, or would or might be likely to lead to an action for damages for defamation."*

The Department again recommends that this provision should be included in the Third Schedule. I welcome this repeated recommendation and note the Department's remarks to the effect that the inclusion of the provision in the Third Schedule will be effected through the Department of Arts, Sport and Tourism.

The Department recommends the continued exclusion of the following provisions from the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>
Statistics Act, 1993	No 21 of 1993	Sections 32 to 35 of Part V

The Department reports that the non-disclosure provisions of the **Statistics Act, 1993** underpin the data collection operations of the Central Statistics Office by guaranteeing that all information provided by respondents to CSO statistical is treated as strictly confidential to that Office. The Department adds that, without this statutory assurance, respondents would be reluctant to provide confidential and market sensitive information required for the compilation of official statistics. I agree with the Department's recommendations.



**Department of Transport**  
**(Report received 30 June 2009)**

The Department reports on sixteen non-disclosure provisions, ten of which, according to the Department, are already included in the Third Schedule:

The non-disclosure provisions in question are:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision already included in Third Schedule</b>
Transport (Re-Organisation of Córas Iompair Éireann) Act 1986	No. 31 of 1986	Section 22
Roads Act 1993	No. 14 of 1993	Section 38
Irish Aviation Authority Act 1993	No. 29 of 1993	Section 35
Harbours Act 1996	No. 11 of 1996	Section 33
Aviation Regulation Act, 2001	No 1 of 2001	Section 19
Transport (Railway Infrastructure) Act, 2001	No 55 of 2001	Section 30
Taxi Regulation Act, 2003	No 25 of 2003	Section 21
Railway Safety Act, 2005	No 31 of 2005	Section 21(1)
Road Safety Authority Act, 2006	No 14 of 2006	Section 26
Dublin Transport Authority Act, 2008	No 15 of 2008	Section 38

The Department recommends the following provision for inclusion in the Third Schedule in view of its similarity to other included provisions e.g. section 35 of the Irish Aviation Authority Act, 1993:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for inclusion in Third Schedule</b>
Air Navigation and Transport (Amendment) Act, 1998	No 24 of 1998	Section 36

I note that section 36 of the **Air Navigation and Transport (Amendment) Act, 1998** has already been included in the Third Schedule by section 20 of the Aviation (Preclearance) Act 2009 (No. 16 of 2009) and SI No. 315 of 2009.

The Department recommends the exclusion of five non-disclosure provisions from the Third Schedule:

<b>Enactment</b>	<b>Statutory Reference</b>	<b>Non-disclosure provision recommended for exclusion from Third Schedule</b>	<b>IC Opinion</b>
Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations, 1997	SI No 205 of 1997	Articles 24(1) and 25(13)	Agree
Merchant Shipping (Investigation of Marine Casualties) Act, 2000	No 14 of 2000	Section 18	Disagree
EC (Occurrence Reporting in Civil Aviation) Regulations, 2007	SI No 285 of 2007	Regulation 9	Agree
EC (Safety of Third Country Aircraft Using Community Airports) Regulations, 2007	SI No 754 of 2007	Regulation 9	Agree
EC (European Aviation Safety Agency)(Amendment) Regulations, 2008	SI No 95 of 2008	Regulation 3(d)	Agree

The Department reports on two non-disclosure provisions where continuing exclusion from the Third Schedule is recommended, viz. articles 24(1) and 25(13) of the **Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations, 1997**. The provisions are that, unless the appropriate authority for the administration of justice in the state of occurrence of an accident or incident determines that the benefits resulting from disclosure of the records outweighs the adverse domestic and international impact it may have, all records associated with the investigation of an air navigation occurrence shall be confined to that investigation. The Department has explained that this is determined by the requirements of the International Convention on Civil Aviation (the Convention) (section 5.12 of Annex 13) and EU Directive 94/56/EC. The Convention, to which Ireland is a party, states in Article 26 that "in so far as its laws permit, States shall conduct investigations in accordance with ICAO procedure." Additionally, the Department says that it is essential to exclude the non-disclosure provision from the Third Schedule so as to maintain the trust of the aviation industry in the confidential nature of the Department's air accident investigation activities. The Department also explains that the sole objective of any investigation is to prevent recurrence and that the mere possibility that records could be disclosed could undermine an investigation if the willingness of those involved to voluntarily disclose sensitive information were to be adversely affected.

The regulations also provide that a draft report of an investigation in another jurisdiction cannot be released without the express permission of that other jurisdiction. This provision derives from the Convention (Annex 13, paragraph 6.13) and the Department considers that its exclusion from the Third Schedule is necessary to preserve international relations and the effective functioning of air accident investigation systems. The Department recognises that the class exemption provided by section 24 of the FOI Act could provide safeguards but feels that the three grounds cited (security, defence and international relations) are too limited and, therefore, that the exclusion of the provision from the Third Schedule must be maintained. In all the circumstances, I agree with the Department's views.

In the case of the **Merchant Shipping (Investigation of Marine Casualties ) Act, 2000**, the Department reports that the body it established - the Marine Casualty Investigation Board (MCIB) - is not a prescribed body for purposes of the FOI Act and recommends the exclusion of its non-disclosure provisions from the Third Schedule. The provision at section 18 relates to confidential information obtained by MCIB in the course of an investigation and provides that disclosure without authorisation by the MCIB or by law constitutes an offence. Authorisation by law would include disclosure on foot of an FOI decision having taken the totality of the FOI Act into account. I also note that MCIB has been included in the First Schedule to the FOI Act since 6 June 2006. Overall, I disagree with the Department's recommendation and recommend that section 18 should be included in the Third Schedule. I am particularly mindful of the public interest dimension which could attach to information in this area.

Article 9 of the **European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007** entitled "Confidentiality of information" includes the following:

*"(1) This regulation shall apply without prejudice to the operation of any other law of the State relating to access to information by judicial authorities.*

*(2) Information received by the competent authority or otherwise by or on behalf of the State .... shall be treated as confidential and used solely for the objective of the Directive and these Regulations and shall not be disclosable under the Freedom of Information Acts 1997 to 2003."*

The Department recommends that section 9 be excluded from the Third Schedule. Apart from finding (1) and (2) contradictory to the extent that the former defers to law relating to access to information while the latter expressly access under the FOI Act, I am concerned that the FOI Act would be singled out for citation in this fashion. The objective of the Directive giving rise to the regulations (Directive 2003/42/EC) - "to contribute to the improvement of air safety by ensuring that relevant information on safety is reported, collected, stored, protected and disseminated" and its Article 8 relating to the protection of information do not support the provision. I agree that the provision has no place in the Third Schedule not least because it would be rather meaningless to include it since it contains an express prohibition on disclosure under the FOI Act. I wish to draw the Joint Committee's particular attention to this provision and recommend that Article 9(2) be amended to remove the blanket prohibition on access under the FOI Act. The objective of Directive would not be compromised in the least by the consideration of an FOI request for such information by reference to the FOI Act.

The Department recommends that regulation 3(d) of the **European Communities (European Aviation Safety Agency) (Amendment) Regulations 2008** should continue in force and should not be included in the Third Schedule to the FOI Act. This amends earlier regulations (SI No. 469 of 2003) and relates to the role of the Irish Aviation Authority in safety related functions carried out on behalf of the European Aviation Safety Agency. Regulation 3(d) imports the same phraseology and my views in this regard are as outlined in the previous paragraph.

The Department recommends that Regulation 9 of the **European Communities (Safety of Third Country Aircraft using Community Airports) Regulations 2007** should continue in force and should not be included in the Third Schedule. The Department supports its view by explaining that the regulations give effect to Directive 2004/36/EC and deals with information relating to the safety of Third Country Aircraft. I agree with the Department that Regulation 9 should not be included in the Third Schedule.

**TABLE 1****EXISTING THIRD SCHEDULE****ENACTMENTS EXCLUDED FROM APPLICATION OF SECTION 32****PART I (STATUTES)**

<b>Number and Year</b>	<b>Short Title</b>	<b>Provision</b>
39 & 40 Vict. c. 77 1876	Cruelty to Animals Act 1876	Section 12C(1)
No. 26 of 1946	Industrial Relations Act, 1946	Section 22
No. 28 of 1947	Health Act 1947	Section 54(3)
No. 1 of 1963	Official Secrets Act, 1963	Sections 4, 5 and 9
No. 14 of 1969	Industrial Relations Act, 1969	Section 14
No. 30 of 1976	Gas Act, 1976	Section 20
No. 16 of 1977	Employment Equality Act, 1977	Section 43(5)
No. 5 of 1979	Údarás na Gaeltachta Act, 1979	Section 15
No. 36 of 1980	Irish Film Board Act, 1980	Section 18
No. 26 of 1983	Postal and Telecommunications Services Act, 1983	Section 37
No. 28 of 1983	Local Government (Planning and Development) Act, 1983	Section 13
No. 2 of 1984	National Social Services Board Act, 1984	Section 16
No. 9 of 1986	Industrial Development Act, 1986	Sections 42 and 43
No. 14 of 1986	Combat Poverty Agency Act, 1986	Section 20
No. 31 of 1986	Transport (Re-organisation of Córas Iompair Éireann) Act, 1986	Section 22

No. 10 of 1987	Labour Services Act, 1987	Section 13
No. 31 of 1987	Restrictive Practices (Amendment) Act, 1987	Section 36
No. 18 of 1988	Agriculture (Research, Training and Advice) Act 1988	Section 14
No. 26 of 1988	Forestry Act, 1988.	Section 33
No. 1 of 1990	Bord Glas Act, 1990	Section 23
No. 18 of 1990	National Treasury Management Agency Act 1990	Section 14
No. 19 of 1990	Industrial Relations Act, 1990	Section 25(6)
No. 25 of 1990	Pensions Act, 1990	Section 24
No. 2 of 1991	Marine Institute Act, 1991	Section 15
No. 9 of 1991	Radiological Protection Act, 1991	Section 36(1)(d)
No. 22 of 1991	Trade and Marketing Promotion Act, 1991	Section 10
No. 24 of 1991	Competition Act, 1991	Paragraph 9 of Schedule
No. 7 of 1992	Environmental Protection Agency Act 1992	Section 39
No. 14 of 1993	Roads Act, 1993	Section 38
No. 19 of 1993	Industrial Development Act, 1993	Paragraphs 4 and 5 of Second Schedule
No. 27 of 1993	Irish Aviation Authority Act, 1993	Section 35
No. 16 of 1994	Health Insurance Act 1994	Section 34(1)
No. 18 of 1994	Irish Horseracing Industry Act, 1994	Section 17
No. 22 of 1994	An Bord Bia Act, 1994 (cited as 1996 in Third Schedule - error originates in SI No. 524 of 1998)	Section 26
No. 25 of 1994	Milk (Regulation of Supply) Act, 1994	Section 16(1)
No. 29 of 1995	Irish Medicines Board Act, 1995	Section 23(1)
No. 4 of 1996	Voluntary Health Insurance (Amendment) Act, 1996	Section 8

No. 11 of 1996	Harbours Act, 1996	Section 33
No. 39 of 1997	Taxes Consolidation Act, 1997	Section 857
No. 29 of 1998	Food Safety Authority of Ireland Act 1998	Section 43(1)
No. 42 of 1998	Western Development Commission Act 1998	Section 18
No. 23 of 1999	Electricity Regulation Act 1999	Section 13
No. 1 of 2000	Comhairle Act 2000	Section 18
No. 1 of 2001	Aviation Regulation Act 2001	Section 19
No. 43 of 2001	Ordnance Survey Ireland Act 2001	Section 23
No. 54 of 2001	Family Support Agency Act 2001	Section 21
No. 55 of 2001	Transport (Railway Infrastructure) Act 2001	Section 30
No. 6 of 2002	Public Health (Tobacco) Act 2002	Section 20(1)
No. 9 of 2002	Housing (Miscellaneous Provisions) Act 2002	Section 13
No. 10 of 2002	Gas (Interim)(Regulation) Act 2002	Section 19
No. 20 of 2002	Communications Regulation Act 2002	Section 24
No. 10 of 2003	National Tourism Development Authority Act 2003	Section 22
No. 23 of 2003	Digital Hub Development Agency Act 2003	Section 27
No. 24 of 2003	Arts Act 2003	Section 20
No. 25 of 2003	Taxi Regulation Act 2003	Section 21(1)
No. 42 of 2004	Health Act 2004	Section 26
No. 22 of 2005	Veterinary Practice Act 2005	Section 25
No. 10 of 2005	Safety, Health and Welfare at Work Act 2005	Section 73
No. 31 of 2005	Railway Safety Act 2005	Section 21(1)

No. 3 of 2006	Irish Medicines Board (Miscellaneous Provisions) Act, 2006	Section 25
No. 17 of 2006	Health (Repayment Scheme) Act 2006	Section 12(4)
No. 8 of 2006	Sea Fisheries and Maritime Jurisdiction Act 2006	Section 58
No. 14 of 2006	Road Safety Authority Act 2006	Section 26
No. 19 of 2006	National Sports Campus Development Authority Act 2006	Section 17
No. 21 of 2006	National Economic and Social Development Act 2006	Section 23
No. 7 of 2007	National Oil Reserves Agency Act 2007	Section 24
No. 23 of 2007	Health Act 2007	Section 84
No. 19 of 2007	Consumer Protection Act 2007	Section 32
No. 15 of 2008	Dublin Transport Authority Act 2008	Section 38
No. 24 of 1998	Air Navigation and Transport (Amendment Act 1998	Section 36



## PART II (STATUTORY INSTRUMENTS)

<b>Number and Year</b>	<b>Short Title</b>	<b>Provision</b>
No. 105 of 1971	Health Services Regulations, 1971	Article 5
No. 187 of 1971	St. James Hospital Board (Establishment) Order 1971	Article 29
No. 288 of 1976	European Communities (Recognition of Medical Qualifications) Regulations 1976	Article 8(b)
No. 237 of 1980	European Communities (Recognition of General Nursing Qualifications) Regulations 1980	Article 7(b)
No. 20 of 1983	European Communities (Recognition of Midwifery Nursing Qualifications) Regulations 1983	Article 8(b)
No. 222 of 1983	Housing (Rent Tribunal) Regulations 1983	Article 14(3)
No. 175 of 1983	Fire Services Council (Establishment) Order 1983	Article 13
No. 279 of 1986	Health Research Board (Establishment) Order 1986	Article 23
No. 226 of 1993	Nursing Homes (Care and Welfare ) Regulations 1993	Article 20
No. 252 of 1994	European Communities (Medical Devices) Regulations 1994	Articles 24A and 26(1)(c)
No. 253 of 1994	European Communities (Active Implantable Medical Devices) Regulations 1994	Article 20(1)(c)
No. 97 of 1997	National Social Work Qualifications Board (Establishment) Order 1997	Article 37
No. 120 of 1997	National Council on Ageing and Older People (Establishment) Order 1997	Article 24
No. 278 of 1997	Women's Health Council (Establishment) Order 1997	Article 24
No. 125 of 1998	European Communities Act 1972 (Access to Information on the Environment) Regulations 1998	Articles 7 and 8
No. 538 of 1998	St. James Hospital Board (Establishment) Order 1971 (Amendment) Order 1998	Article 8
No. 253 of 1999	St Luke's Hospital Board (Establishment) Order 1999	Article 25
No. 376 of 1999	National Council for the Professional Development of Nursing and Midwifery (Establishment) Order 1999	Article 25
No. 109 of 2000	Pre-Hospital Emergency Care Council (Establishment) Order 2000	Article 35
No. 304 of 2001	European Communities (In Vitro Diagnostic Medical Devices) Regulations 2001	Articles 17(4)(c) and 20

No. 444 of 2001	EC. (Medical Devices) (Amendment) Regulations 2001	Articles 12, 24(a)
No. 446 of 2001	Crisis Pregnancy Agency (Establishment) Order 2001	Article 24
No. 556 of 2002	EC. (Amendment of Cruelty to Animals Act 1876) Regulations 2002	Article 12 (c)(1)
No. 179 of 2004	National Treatment Purchase Fund Board (Establishment) Order 2004	Article 16
No. 451 of 2004	National Haemophilia Council (Establishment) Order 2004	Article 23

**TABLE 2****ENACTMENTS RECOMMENDED BY MINISTERS FOR INCLUSION IN THIRD SCHEDULE****PART I (STATUTES)**

<b>Number and Year</b>	<b>Short Title</b>	<b>Provision</b>
No. 4 of 1958	Prices Act 1958	Section 25
No. 11 of 1986	National Archives Act 1986	Section 8(4)
No. 6 of 1987	Air Pollution Act 1987	Section 16
No. 25 of 1990	Pensions Act 1990	Section 145 of Part XI
No. 28 of 1996	National Standards Authority of Ireland Act 1996	Par. 5 of Second Schedule
No. 26 of 1998	Turf Development Act, 1998	Section 32
No. 21 of 1998	Employment Equality Act, 1998	Section 61(5)
No. 34 of 1998	Industrial Development (Enterprise Ireland) Act, 1998	Section 16
No. 6 of 1999	Irish Sports Council Act, 1999	Section 21
No. 30 of 2000	Planning & Development Act, 2000	Section 113
No. 17 of 2001	Health Insurance (Amendment) Act 2001	Section 9 (inserts 12A)
No. 37 of 2001	Local Government Act, 2001	Section 80
No. 24 of 2001	Children Act, 2001	Section 178(1) & (2)
No. 2 of 2002	Sustainable Energy Act, 2002	Section 19
No. 30 of 2003	Industrial Development (Science Foundation Ireland) Act, 2003	Section 17
No. 42 of 2004	Health Act 2004	Regs 2006 - 8(7) and 14(6)
No. 3 of 2007	Health Insurance (Amendment) Act 2007	Section 3 (amends 12A)
No. 17 of 2007	Foyle and Carlingford Fisheries Act 2007	Section 26
No 20 of 2007	Pharmacy Act 2007	Section 11 of Schedule 1
No. 15 of 2009	Nursing Homes Support Scheme Act 2009	Section 45(4)
No. 24 of 2009	Health Insurance (Miscellaneous Provisions) Act 2009	Section 9 (inserts 7G)

**PART II (STATUTORY INSTRUMENTS)**

<b>Number and Year</b>	<b>Short Title</b>	<b>Provision</b>
No. 448 of 2000	EC (Internal Market in Electricity) Regulations 2000	Article 12

**TABLE 3****ENACTMENTS RECOMMENDED BY MINISTERS FOR EXCLUSION FROM THIRD SCHEDULE****PART I (STATUTES)**

<b>Number and Year</b>	<b>Short Title</b>	<b>Provision</b>
No. 23 of 1923	Censorship of Films Act, 1923	n/a
No. 21 of 1925	Censorship of Films Act, 1925	n/a
No. 21 of 1929	Censorship of Publications Act, 1929	n/a
No. 13 of 1930	Censorship of Films Act, 1930	n/a
No. 22 of 1942	Central Bank Act, 1942	Section 33 AK
No. 1 of 1946	Censorship of Publications Act, 1946	n/a
No. 8 of 1952	Vital Statistics & Births, Deaths & Marriages Registration Act 1952	Section 2 (5)
No. 16 of 1964	Registration of Title Act, 1964	Section 107
No. 7 of 1970	Censorship of Films Act, 1970	n/a
No. 26 of 1980	Ombudsman Act, 1980	Section 9
No. 9 of 1985	Dentists Act 1985	Section 38(5)
No. 18 of 1985	Nurses Act 1985	Section 38(5)
No. 21 of 1989	Trustee Savings Bank Act, 1989	Paragraph 15 of Second Schedule
No. 22 of 1989	Video Recordings Act, 1989	n/a
No. 33 of 1990	Companies Act, 1990	Section 21
No. 9 of 1991	Radiological Protection Act, 1991	Section 36(1)(d)
No. 1 of 1992	Patents Act, 1992	Sections 28, 88, 94, 96 & 101
No. 23 of 1923	Censorship of Films Act, 1923	n/a
No. 21 of 1925	Censorship of Films Act, 1925	n/a
No. 21 of 1929	Censorship of Publications Act, 1929	n/a
No. 13 of 1930	Censorship of Films Act, 1930	n/a
No. 22 of 1942	Central Bank Act, 1942	Section 33 AK
No. 1 of 1946	Censorship of Publications Act, 1946	n/a
No. 8 of 1952	Vital Statistics & Births, Deaths & Marriages Registration Act 1952	Section 2 (5)
No. 16 of 1964	Registration of Title Act, 1964	Section 107
No. 7 of 1970	Censorship of Films Act, 1970	n/a
No. 26 of 1980	Ombudsman Act, 1980	Section 9

No. 9 of 1985	Dentists Act 1985	Section 38(5)
No. 18 of 1985	Nurses Act 1985	Section 38(5)
No. 21 of 1989	Trustee Savings Bank Act, 1989	Paragraph 15 of Second Schedule
No. 22 of 1989	Video Recordings Act, 1989	n/a
No. 33 of 1990	Companies Act, 1990	Section 21
No. 9 of 1991	Radiological Protection Act, 1991	Section 36(1)(d)
No. 1 of 1992	Patents Act, 1992	Sections 28, 88, 94, 96 & 101
No. 29 of 1992	Censorship of Films (Amendment) Act, 1992	n/a
No. 10 of 1993	Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993	Sections 10 and 12
No. 21 of 1993	Statistics Act, 1993	Sections 32 - 35 of Part V
No. 24 of 1993	Waiver of Certain Tax, Interest and Penalties Act, 1993	Section 7
No. 22 of 1995	Ethics in Public Office Act, 1995	Section 35
No. 6 of 1996	Trade Marks Act, 1996	Sections 43, 70 & 91
No. 17 of 1996	Refugee Act, 1996	Section 19
No. 20 of 1996	Transnational Information and Consultation of Employees Act, 1996	Section 15
No. 31 of 1996	Criminal Assets Bureau Act, 1996	Sections 10 and 11
No. 23 of 1997	Fisheries (Amendment) Act, 1997	Section 30
No. 25 of 1997	Electoral Act, 1997	Section 14
No. 27 of 1997	Public Service Management Act, 1997	Section 5(3)
No. 39 of 1997	Taxes Consolidation Act, 1997	Section 859
No. 21 of 1998	Employment Equality Act, 1998	Section 97(2)
No. 47 of 1998	Comptroller & Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998	Sections 16 & 22
No. 51 of 1998	Education Act, 1998	Section 53
No. 9 of 1999	Criminal Justice (Location of Victims Remains) Act, 1999	Section 9
No. 7 of 2000	Commission to Inquire into Child Abuse Act, 2000	Sections 27, 28, 31, 33 & 34
No. 8 of 2000	Equal Status Act, 2000	Section 36(2)
No. 14 of 2000	Merchant Shipping (Investigation of Marine Casualties ) Act, 2000	Section 18
No. 33 of 2000	National Pensions Reserve Fund Act, 2000	Section 13
No. 24 of 2001	Children Act, 2001	Sections 32 & 44 and 235
No. 28 of 2001	Company Law Enforcement Act, 2001	Section 17
No. 32 of 2001	Dormant Accounts Act, 2001	Section 26(2)

No. 39 of 2001	Industrial Designs Act, 2001	Sections 38(3), 39(2) & 39(5)
No. 13 of 2002	Residential Institutions Redress Act, 2002	Sections 28, 30 & 31
No. 14 of 2002	Competition Act, 2002	Sections 32, 22(4) & 21(3)
No. 20 of 2002	Communications Regulation Act 2002	Sections 24 A to C and Section 38 Part 2A
No. 29 of 2002	National Development Finance Agency Act, 2002	Section 18
No. 2 of 2003	Unclaimed Life Assurance Policies Act, 2003	Section 24(2)
No. 6 of 2003	Data Protection (Amendment) Act, 2003	Paragraph 10 of Second Schedule
No. 28 of 2003	Houses of the Oireachtas Commission Act 2003	Section 16(4)(d)
No. 40 of 2003	Independent Monitoring Commission Act, 2003	Section 9
No. 44 of 2003	Companies (Auditing and Accounting) Act, 2003	Section 31
No. 46 of 2003	Personal Injuries Assessment Board Act, 2003	Section 73
No. 3 of 2004	Civil Registration Act 2004	Sections 35(1), 62(1), 73(4)
No. 12 of 2004	Private Security Services Act, 2004	Section 18 Par. 9 of Part 1 Schedule 2
No. 42 of 2004	Health Act 2004	Section 30
No. 10 of 2005	Safety Health and Welfare at Work Act 2005	Section 74
No. 21 of 2005	Grangegorman Development Act 2005	Section 31
No. 27 of 2005	Health and Social Care Professionals Act 2005	Sections 46(2) and 55(5)(a)
No. 22 of 2006	Hepatitis C Compensation Tribunal (Amendment) Act 2006	Section 4
No. 5 of 2007	Electricity Regulation (Amendment) (Single Electricity Market) Act 2007	Section 8
No. 20 of 2007	Pharmacy Act 2007	Sections 13(3) and 37(7)
No. 25 of 2007	Medical Practitioners Act 2007	Sections 14(4), 56(2), 62(5), 95(1) & (3)
No. 13 of 2008	Chemicals Act 2008	Section 28
No. 34 of 2009	National Asset Management Act 2009	Section 202(2) & (5)
No. 21 of 2010	Adoption Act 2010	Section 86

## PART II (STATUTORY INSTRUMENTS)

<b>Number and Year</b>	<b>Short Title</b>	<b>Provision</b>
No. 230 of 1972	Land Registration Rules, 1972	Rule 188
No. 179 of 1992	Patents Rules, 1992	Rules 23, 64 & 65
No. 150 of 1993	EC (Mutual Assistance as regards correct application of legislation on veterinary and zootechnical matters) Regulations, 1993	Article 3(2)
No. 205 of 1997	Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations, 1997	Section 24(1) & 25(13)
No. 73 of 2001	Genetically Modified Organisms (Contained Use) Regulations, 2001	Article 9
No. 280 of 2002	Industrial Designs Regulations, 2002	Regulation 31(2)
No. 83 of 2003	EC (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations, 2003	Article 11
No. 500 of 2003	Genetically Modified Organisms (Deliberate Release) Regulations, 2003	Article 10
Various SIs	Various Double Taxation Relief Orders	Articles relating to the Exchange of Information
No. 549 of 2004	Children (Family Welfare Conference) Regulations 2004	Article 6
No. 360 of 2005	EC (Quality and Safety of Human Blood and Blood Components) Regulations 2005	Regulation 15
No. 158 of 2006	EC (Quality and Safety of Human Tissues and Cells) Regulations 2006	Regulation 18
No. 374 of 2006	EC (Clinical Trials on Medicinal Products for Human Use) (Amendment No. 2) Regulations 2006	Article 4© and Part 2, Article 11
No. 31 of 2007	Covered by a clause in the confidential stipulations in the Hep C Compensation Tribunal Amendment Act	
No. 285 of 2007	EC (Occurrence reporting in Civil Aviation) Regulations 2007	Regulation 9
No. 598 of 2007	EC (Human Tissues and Cells Traceability Requirements, Notification of Serious Adverse Reactions and Events and Certain Technical Requirements) Regulations 2007	Schedule 1, Part E, section 8



No. 754 of 2007	EC (Safety of Third Country Aircraft Using Community Airports) Regulations 2007	Regulation 9
No. 164 of 2008	Recognition of the Professional Qualifications of Nurses and Midwives (Directive 2005/36/EC) Regulations 2008	Article 9(7)
No. 95 of 2008	EC (European Aviation Safety Agency) (Amendment) Regulations 2008	Regulation 3(d)
No. 263 of 2008	Recognition of the Professional Qualifications of Dentists (Directive 2005/36/EC) Regulations 2008	Article 11(7)
No. 364 of 2008	Covered by a clause in the Hep C Compensation Tribunal Amendment Act	
No. 489 of 2008	Recognition of the Professional Qualifications relating to the Profession of Pharmacist (No. (Directive 2005/36/EC) Regulations 2008	Article 10
No. 109 of 2009	EC. (Active Implantable Medical Devices) (Amendment) Regulations 2009	Article 1.6 of Schedule 7
No. 110 of 2009	EC. (Medical Devices) (Amendment) Regulations 2009	Article 1.2 of Schedule 10
No. 117 of 2010	EC (Official Control of Foodstuffs) Regulations 2010	Article 13(3)