



# Commissioners for Revenue and Customs Act 2005

## 2005 CHAPTER 11

### *Information*

#### **17 Use of information**

- (1) Information acquired by the Revenue and Customs in connection with a function may be used by them in connection with any other function.
- (2) Subsection (1) is subject to any provision which restricts or prohibits the use of information and which is contained in—
  - (a) this Act,
  - (b) any other enactment, or
  - (c) an international or other agreement to which the United Kingdom or Her Majesty's Government is party.
- (3) In subsection (1) “the Revenue and Customs” means—
  - (a) the Commissioners,
  - (b) an officer of Revenue and Customs,
  - (c) a person acting on behalf of the Commissioners or an officer of Revenue and Customs,
  - (d) a committee established by the Commissioners,
  - (e) a member of a committee established by the Commissioners,
  - (f) the Commissioners of Inland Revenue (or any committee or staff of theirs or anyone acting on their behalf),
  - (g) the Commissioners of Customs and Excise (or any committee or staff of theirs or anyone acting on their behalf), and
  - (h) a person specified in section 6(2) or 7(3).
- (4) In subsection (1) “function” means a function of any of the persons listed in subsection (3).
- (5) In subsection (2) the reference to an enactment does not include—

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- (a) an Act of the Scottish Parliament or an instrument made under such an Act, or
  - (b) an Act of the Northern Ireland Assembly or an instrument made under such an Act.
- (6) Part 2 of Schedule 2 (which makes provision about the supply and other use of information in specified circumstances) shall have effect.

## **18 Confidentiality**

- (1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.
- (2) But subsection (1) does not apply to a disclosure—
- (a) which—
    - (i) is made for the purposes of a function of the Revenue and Customs, and
    - (ii) does not contravene any restriction imposed by the Commissioners,
  - (b) which is made in accordance with section 20 or 21,
  - (c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
  - (d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
  - (e) which is made in pursuance of an order of a court,
  - (f) which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,
  - (g) which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or
  - (h) which is made with the consent of each person to whom the information relates.
- (3) Subsection (1) is subject to any other enactment permitting disclosure.
- (4) In this section—
- (a) a reference to Revenue and Customs officials is a reference to any person who is or was—
    - (i) a Commissioner,
    - (ii) an officer of Revenue and Customs,
    - (iii) a person acting on behalf of the Commissioners or an officer of Revenue and Customs, or
    - (iv) a member of a committee established by the Commissioners,
  - (b) a reference to the Revenue and Customs has the same meaning as in section 17,
  - (c) a reference to a function of the Revenue and Customs is a reference to a function of—
    - (i) the Commissioners, or
    - (ii) an officer of Revenue and Customs,

- (d) a reference to the Scottish inspectors or the Northern Ireland inspectors has the same meaning as in section 27, and
- (e) a reference to an enactment does not include—
  - (i) an Act of the Scottish Parliament or an instrument made under such an Act, or
  - (ii) an Act of the Northern Ireland Assembly or an instrument made under such an Act.

## **19 Wrongful disclosure**

- (1) A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity—
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it.
- (2) In subsection (1) “revenue and customs information relating to a person” means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty’s Revenue and Customs (whether relating to Commissioners, officers or others).
- (3) It is a defence for a person charged with an offence under this section of disclosing information to prove that he reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (5) A prosecution for an offence under this section may be instituted in England and Wales only—
  - (a) by the Director of Revenue and Customs Prosecutions, or
  - (b) with the consent of the Director of Public Prosecutions.
- (6) A prosecution for an offence under this section may be instituted in Northern Ireland only—
  - (a) by the Commissioners, or
  - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (7) In the application of this section to Scotland or Northern Ireland the reference in subsection (4)(b) to 12 months shall be taken as a reference to six months.
- (8) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of section 18(1) or 20(9) (whether or not this section applies to the contravention).

## 20 Public interest disclosure

- (1) Disclosure is in accordance with this section (as mentioned in section 18(2)(b)) if—
  - (a) it is made on the instructions of the Commissioners (which may be general or specific),
  - (b) it is of a kind—
    - (i) to which any of subsections (2) to (7) applies, or
    - (ii) specified in regulations made by the Treasury, and
  - (c) the Commissioners are satisfied that it is in the public interest.
- (2) This subsection applies to a disclosure made—
  - (a) to a person exercising public functions (whether or not within the United Kingdom),
  - (b) for the purposes of the prevention or detection of crime, and
  - (c) in order to comply with an obligation of the United Kingdom, or Her Majesty's Government, under an international or other agreement relating to the movement of persons, goods or services.
- (3) This subsection applies to a disclosure if—
  - (a) it is made to a body which has responsibility for the regulation of a profession,
  - (b) it relates to misconduct on the part of a member of the profession, and
  - (c) the misconduct relates to a function of the Revenue and Customs.
- (4) This subsection applies to a disclosure if—
  - (a) it is made to a constable, and
  - (b) either—
    - (i) the constable is exercising functions which relate to the movement of persons or goods into or out of the United Kingdom, or
    - (ii) the disclosure is made for the purposes of the prevention or detection of crime.
- (5) This subsection applies to a disclosure if it is made—
  - (a) to the National Criminal Intelligence Service, and
  - (b) for a purpose connected with its functions under section 2(2) of the Police Act 1997 (c. 50) (criminal intelligence).
- (6) This subsection applies to a disclosure if it is made—
  - (a) to a person exercising public functions in relation to public safety or public health, and
  - (b) for the purposes of those functions.
- (7) This subsection applies to a disclosure if it—
  - (a) is made to the Police Information Technology Organisation for the purpose of enabling information to be entered in a computerised database, and
  - (b) relates to—
    - (i) a person suspected of an offence,
    - (ii) a person arrested for an offence,
    - (iii) the results of an investigation, or
    - (iv) anything seized.
- (8) Regulations under subsection (1)(b)(ii)—

- (a) may specify a kind of disclosure only if the Treasury are satisfied that it relates to—
    - (i) national security,
    - (ii) public safety,
    - (iii) public health, or
    - (iv) the prevention or detection of crime;
  - (b) may make provision limiting or restricting the disclosures that may be made in reliance on the regulations; and that provision may, in particular, operate by reference to—
    - (i) the nature of information,
    - (ii) the person or class of person to whom the disclosure is made,
    - (iii) the person or class of person by whom the disclosure is made,
    - (iv) any other factor, or
    - (v) a combination of factors;
  - (c) shall be made by statutory instrument;
  - (d) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (9) Information disclosed in reliance on this section may not be further disclosed without the consent of the Commissioners (which may be general or specific); (but the Commissioners shall be taken to have consented to further disclosure by use of the computerised database of information disclosed by virtue of subsection (7)).

## **21 Disclosure to prosecuting authority**

- (1) Disclosure is in accordance with this section (as mentioned in section 18(2)(b)) if made—
- (a) to a prosecuting authority, and
  - (b) for the purpose of enabling the authority—
    - (i) to consider whether to institute criminal proceedings in respect of a matter considered in the course of an investigation conducted by or on behalf of Her Majesty’s Revenue and Customs, or
    - (ii) to give advice in connection with a criminal investigation (within the meaning of section 35(5)(b)) or criminal proceedings.
- (2) In subsection (1) “prosecuting authority” means—
- (a) the Director of Revenue and Customs Prosecutions,
  - (b) in Scotland, the Lord Advocate or a procurator fiscal, and
  - (c) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (3) Information disclosed to a prosecuting authority in accordance with this section may not be further disclosed except—
- (a) for a purpose connected with the exercise of the prosecuting authority’s functions, or
  - (b) with the consent of the Commissioners (which may be general or specific).
- (4) A person commits an offence if he contravenes subsection (3).
- (5) It is a defence for a person charged with an offence under this section to prove that he reasonably believed—

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- (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (7) A prosecution for an offence under this section may be instituted in England and Wales only—
- (a) by the Director of Revenue and Customs Prosecutions, or
  - (b) with the consent of the Director of Public Prosecutions.
- (8) A prosecution for an offence under this section may be instituted in Northern Ireland only—
- (a) by the Commissioners, or
  - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (9) In the application of this section to Scotland or Northern Ireland the reference in subsection (6)(b) to 12 months shall be taken as a reference to six months.

## **22 Data protection, &c.**

Nothing in sections 17 to 21 authorises the making of a disclosure which—

- (a) contravenes the Data Protection Act 1998 (c. 29), or
- (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).

## **23 Freedom of information**

- (1) Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (c. 36) (prohibitions on disclosure) if its disclosure—
- (a) would specify the identity of the person to whom the information relates, or
  - (b) would enable the identity of such a person to be deduced.
- (2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.
- (3) In subsection (1) “revenue and customs information relating to a person” has the same meaning as in section 19.