Borders, Citizenship and Immigration Act 2009

2009 CHAPTER 11

PART 1

BORDER FUNCTIONS

Use and disclosure of information

14 Use and disclosure of customs information

(1) A person to whom this section applies may—

(a) use customs information acquired by that person in connection with a function exercisable by that person for the purpose of any other function exercisable by that person, and

(b) disclose customs information to any other person to whom this section applies for the purpose of a function exercisable by that person.

(2) The persons to whom this section applies are—

(a) a designated customs official,

(b) an immigration officer,

(c) the Secretary of State by whom general customs functions are exercisable,

(d) any other Minister of the Crown in the department of that Secretary of State,

(e) the Director of Border Revenue, and

(f) a person acting on behalf of a person mentioned in paragraphs (a) to (e).

(3) This section is subject to any provision that restricts or prohibits the use or disclosure of information and that is contained in—

(a) this Part,

(b) any other enactment, or

(c) an international or other agreement to which the United Kingdom or Her Majesty's Government is party.

(4) In subsection (3) the reference to an enactment does not include an enactment contained in, or in an instrument made under—
- (a) an Act of the Scottish Parliament,
- (b) a Measure or Act of the National Assembly for Wales, or
- (c) Northern Ireland legislation.

(5) This section is without prejudice to—
- (a) the use by a person to whom it applies of information other than customs information;
- (b) the disclosure by or to a person to whom it applies of information other than customs information.

(6) In this Part—

"customs function" means a general customs function or a customs revenue function;

"customs information" means information acquired or capable of being acquired as a result of the exercise of a customs function;

"customs revenue information" means information acquired or capable of being acquired as a result of the exercise of a customs revenue function;

"designated customs official" means a general customs official or a customs revenue official.

(7) It is immaterial for the purposes of subsection (6)—
- (a) whether the information was acquired or is capable of being acquired by the person by whom it is held or another person;
- (b) whether the information was also acquired or is also capable of being acquired in the exercise of any other function.

15 Prohibition on disclosure of personal customs information

(1) A person who is or was a relevant official, the Secretary of State by whom general customs functions are exercisable or another Minister of the Crown in that Secretary of State's department may not disclose personal customs information to a person who is not—
- (a) a relevant official, or
- (b) a Minister of the Crown in that department.

(2) A person who is or was a relevant official may not disclose personal customs revenue information to a Minister of the Crown.

(3) In this Part "relevant official" means—
- (a) a designated customs official,
- (b) an immigration officer,
- (c) the Director of Border Revenue, or
- (d) a person acting on behalf of—
  - (i) the Secretary of State by whom general customs functions are exercisable, or
  - (ii) a person mentioned in paragraphs (a) to (c).

(4) In this Part—

"personal customs information" means customs information relating to a person that—

(a) identifies that person, or

(b) enables that person to be identified (either by itself or in combination with other information);

"personal customs revenue information" means customs revenue information relating to a person that—

(a) identifies that person, or

(b) enables that person to be identified (either by itself or in combination with other information).

(5) A person—

(a) does not breach subsection (1) by disclosing information the person knows was acquired otherwise than as the result of the exercise of a customs function;

(b) does not breach subsection (2) by disclosing information the person knows was acquired otherwise than as the result of the exercise of a customs revenue function.

(6) Subsections (1) and (2) are also subject to—

(a) section 16 (exceptions to the prohibition in this section), and

(b) any enactment (other than an enactment contained in this Part) permitting disclosure, where the disclosure in question does not contravene any restriction imposed by the Commissioners for Her Majesty's Revenue and Customs on the disclosure of customs revenue information.

(7) This section does not apply to information supplied by or on behalf of Her Majesty's Revenue and Customs or the Revenue and Customs Prosecutions Office.

This is without prejudice to any other restriction on the disclosure of such information.

(8) In subsection (6) the reference to an enactment does not include an enactment contained in, or in an instrument made under—

(a) an Act of the Scottish Parliament,

(b) a Measure or Act of the National Assembly for Wales, or

(c) Northern Ireland legislation.

16 Exceptions to section 15 prohibition

(1) A person does not breach section 15(1) or (2) by making a disclosure—

(a) to which any of subsections (3) to (8) applies, and

(b) which, in the case of a disclosure of customs revenue information, does not contravene any restriction imposed by the Commissioners for Her Majesty's Revenue and Customs.

(2) Subsection (1)(b) does not apply if the person making the disclosure knows that the information was acquired otherwise than as the result of the exercise of a customs revenue function.

(3) This subsection applies to a disclosure which is made for the purposes of—

(a) a customs function,

(b) a function relating to immigration, asylum or nationality,

(c) a function relating to national security, or

(d) a function relating to the prevention or detection of crime.

(4) This subsection applies to a disclosure which is made to a person exercising public functions (whether or not within the United Kingdom) for the purposes of any of those functions.

(5) This subsection applies to a disclosure which—

(a) is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a function within subsection (3),

(b) is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom), or

(c) is made in pursuance of an order of a court.

(6) This subsection applies to a disclosure which is made with the consent of each person to whom the information relates.

(7) This subsection applies to a disclosure which is made in order to comply with an obligation of the United Kingdom, or Her Majesty's Government, under an international or other agreement.

(8) This subsection applies to a disclosure—

(a) to a person specified in regulations made jointly by the Treasury and the Secretary of State, or

(b) of a kind specified in such regulations.

17 Prohibition on further disclosure

(1) A person to whom information is disclosed in reliance on section 16 or this section may not disclose that information without the consent of a relevant official (which may be general or specific).

(2) A person does not breach subsection (1) by making a disclosure—

(a) to which any of subsections (3) to (8) of section 16 applies, and

(b) which, in the case of a disclosure of customs revenue information, does not contravene any restriction imposed by the Commissioners for Her Majesty's Revenue and Customs.

(3) Subsection (2)(b) does not apply if the person making the disclosure knows that the information was acquired otherwise than as the result of the exercise of a customs revenue function.

(4) This section is also subject to any other enactment permitting disclosure.

(5) In subsection (4) the reference to an enactment does not include an enactment contained in, or in an instrument made under—

(a) an Act of the Scottish Parliament,

(b) a Measure or Act of the National Assembly for Wales, or

(c) Northern Ireland legislation.

18 Offence of wrongful disclosure

(1) A person commits an offence if the person breaches section 15(1) or (2) or 17(1).

(2) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed—

(a) that the disclosure was lawful, or

(b) that the information had already and lawfully been made available to the public.

(3) A prosecution for an offence under this section—

(a) may be brought in England and Wales only with the consent of the Director of Public Prosecutions or the Director of Revenue and Customs Prosecutions;

(b) may be brought in Northern Ireland only with the consent of the Director of Public Prosecutions for Northern Ireland.

(4) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a breach of section 15(1) or (2) or 17(1) (whether or not this section applies to the breach).

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;

(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;

(ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

(6) In relation to an offence under this section committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (increase in maximum sentence on summary conviction of offence triable either way), the reference in subsection (5)(b)(i) to 12 months has effect as if it were a reference to 6 months.

19 Application of statutory provisions

(1) Nothing in sections 14 to 17 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).

(2) Information whose disclosure is prohibited by section 15(1) or (2) or 17(1) is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (c. 36).

(3) Sections 15(6), 16 and 17(2) and (4) are to be disregarded in determining for the purposes of subsection (2) whether the disclosure of personal customs information is prohibited by section 15(1) or (2) or 17(1).

(4) In section 23 of the Commissioners for Revenue and Customs Act 2005 (c. 11) (freedom of information), after subsection (1) insert—

"(1A) Subsections (2) and (3) of section 18 are to be disregarded in determining for the purposes of subsection (1) of this section whether the disclosure of revenue

and customs information relating to a person is prohibited by subsection (1) of that section."

20 Supply of Revenue and Customs information

(1) After section 41 of the UK Borders Act 2007 (c. 30) insert—

"41A Supply of information to UK Border Agency

(1) HMRC and the RCPO may each supply a person to whom this section applies with information for use for the purpose of the customs functions exercisable by that person.

(2) This section applies to—
- (a) a designated customs official,
- (b) the Secretary of State by whom general customs functions are exercisable,
- (c) the Director of Border Revenue, and
- (d) a person acting on behalf of a person mentioned in paragraphs (a) to (c).

(3) This section applies to a document or article which comes into the possession of, or is discovered by, HMRC or the RCPO, or a person acting on behalf of HMRC or the RCPO, as it applies to information.

(4) A person to whom this section applies—
- (a) may retain for a purpose within subsection (1) a document or article supplied by virtue of subsection (3);
- (b) may dispose of a document or article supplied by virtue of subsection (3).

(5) A power conferred by this section on HMRC or the RCPO may be exercised on behalf of HMRC or the RCPO by a person who is authorised (generally or specifically) for the purpose.

(6) In this section and section 41B "customs function" and "general customs function" have the meanings given by Part 1 of the Borders, Citizenship and Immigration Act 2009.

41B UK Border Agency: onward disclosure

(1) A person to whom information is supplied under section 41A may not disclose that information.

(2) But subsection (1) does not apply to a disclosure—
- (a) which is made for the purpose of a customs function, where the disclosure does not contravene any restriction imposed by the Commissioners for Her Majesty's Revenue and Customs;
- (b) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a customs function;
- (c) which is made for the purpose of a criminal investigation or criminal proceedings (whether or not within the United Kingdom);
- (d) which is made in pursuance of an order of a court;

(e) which is made with the consent (which may be general or specific) of HMRC or the RCPO, depending on by whom or on whose behalf the information was supplied;

(f) 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) The reference in subsection (1) to information supplied under section 41A includes a reference to documents or articles supplied by virtue of subsection (3) of that section.

(5) The reference in that subsection to a person to whom information is supplied includes a reference to a person who is or was acting on behalf of that person.

(6) In subsection (3) "enactment" does not include—

(a) an Act of the Scottish Parliament,

(b) an Act of the Northern Ireland Assembly, or

(c) an instrument made under an Act within paragraph (a) or (b)."

(2) In section 42(1) of that Act (wrongful disclosure) after "section 41" insert "or 41B".

21 Duty to share information

(1) In section 36 of the Immigration, Asylum and Nationality Act 2006 (c. 13) (duty to share information), in subsection (1), for paragraph (a) substitute—

"(a) designated customs officials,

(aa) immigration officers,

(ab) the Secretary of State in so far as the Secretary of State has general customs functions,

(ac) the Secretary of State in so far as the Secretary of State has functions relating to immigration, asylum or nationality,

(ad) the Director of Border Revenue and any person exercising functions of the Director,".

(2) In subsection (6)(a) of that section, after "persons" insert "or descriptions of persons".

(3) In subsection (9) of that section, at the appropriate place insert—

""designated customs official" and "general customs function" have the meanings given by Part 1 of the Borders, Citizenship and Immigration Act 2009,".