



# Criminal Appeal Act 1995

## 1995 CHAPTER 35

### PART II

#### THE CRIMINAL CASES REVIEW COMMISSION

##### *The Commission*

### **8 The Commission**

- (1) There shall be a body corporate to be known as the Criminal Cases Review Commission.
- (2) The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown.
- (3) The Commission shall consist of not fewer than eleven members.
- (4) The members of the Commission shall be appointed by Her Majesty on the recommendation of the Prime Minister.
- (5) At least one third of the members of the Commission shall be persons who are legally qualified; and for this purpose a person is legally qualified if—
  - (a) he has a ten year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990, or
  - (b) he is a member of the Bar of Northern Ireland, or solicitor of the Supreme Court of Northern Ireland, of at least ten years' standing.
- (6) At least two thirds of the members of the Commission shall be persons who appear to the Prime Minister to have knowledge or experience of any aspect of the criminal justice system and of them at least one shall be a person who appears to him to have knowledge or experience of any aspect of the criminal justice system in Northern Ireland; and for the purposes of this subsection the criminal justice system includes, in particular, the investigation of offences and the treatment of offenders.

- (7) Schedule 1 (further provisions with respect to the Commission) shall have effect.

*References to court*

**9 Cases dealt with on indictment in England and Wales**

- (1) Where a person has been convicted of an offence on indictment in England and Wales, the Commission—
- (a) may at any time refer the conviction to the Court of Appeal, and
  - (b) (whether or not they refer the conviction) may at any time refer to the Court of Appeal any sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction.
- (2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 1 of the 1968 Act against the conviction.
- (3) A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction on an indictment shall be treated for all purposes as an appeal by the person under section 9 of the 1968 Act against—
- (a) the sentence, and
  - (b) any other sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction or any other conviction on the indictment.
- (4) On a reference under subsection (1) of a person's conviction on an indictment the Commission may give notice to the Court of Appeal that any other conviction on the indictment which is specified in the notice is to be treated as referred to the Court of Appeal under subsection (1).
- (5) Where a verdict of not guilty by reason of insanity has been returned in England and Wales in the case of a person, the Commission may at any time refer the verdict to the Court of Appeal; and a reference under this subsection shall be treated for all purposes as an appeal by the person under section 12 of the 1968 Act against the verdict.
- (6) Where a jury in England and Wales has returned findings that a person is under a disability and that he did the act or made the omission charged against him, the Commission may at any time refer either or both of those findings to the Court of Appeal; and a reference under this subsection shall be treated for all purposes as an appeal by the person under section 15 of the 1968 Act against the finding or findings referred.

**10 Cases dealt with on indictment in Northern Ireland**

- (1) Where a person has been convicted of an offence on indictment in Northern Ireland, the Commission—
- (a) may at any time refer the conviction to the Court of Appeal, and
  - (b) (whether or not they refer the conviction) may at any time refer to the Court of Appeal any sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction.

- (2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 1 of the 1980 Act against the conviction.
- (3) A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction on an indictment shall be treated for all purposes as an appeal by the person under section 8 or 9 (as the case may be) of the 1980 Act against—
  - (a) the sentence, and
  - (b) any other sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction or any other conviction on the indictment.
- (4) On a reference under subsection (1) of a person's conviction on an indictment the Commission may give notice to the Court of Appeal that any other conviction on the indictment which is specified in the notice is to be treated as referred to the Court of Appeal under subsection (1).
- (5) On a reference under subsection (1) the Court of Appeal may not pass any sentence more severe than that passed by the Crown Court.
- (6) Where a finding of not guilty on the ground of insanity has been recorded in Northern Ireland in the case of a person, the Commission may at any time refer the finding to the Court of Appeal; and a reference under this subsection shall be treated for all purposes as an appeal by the person under section 12 of the 1980 Act against the finding.
- (7) Where a jury in Northern Ireland has returned a finding that a person is unfit to be tried, the Commission may at any time refer the finding to the Court of Appeal; and a reference under this subsection shall be treated for all purposes as an appeal by the person under section 13A of the 1980 Act against the finding.

## **11 Cases dealt with summarily in England and Wales**

- (1) Where a person has been convicted of an offence by a magistrates' court in England and Wales, the Commission—
  - (a) may at any time refer the conviction to the Crown Court, and
  - (b) (whether or not they refer the conviction) may at any time refer to the Crown Court any sentence imposed on, or in subsequent proceedings relating to, the conviction.
- (2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 108(1) of the Magistrates' Courts Act 1980 against the conviction (whether or not he pleaded guilty).
- (3) A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction shall be treated for all purposes as an appeal by the person under section 108(1) of the Magistrates' Courts Act 1980 against—
  - (a) the sentence, and
  - (b) any other sentence imposed on, or in subsequent proceedings relating to, the conviction or any related conviction.

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- (4) On a reference under subsection (1) of a person's conviction the Commission may give notice to the Crown Court that any related conviction which is specified in the notice is to be treated as referred to the Crown Court under subsection (1).
- (5) For the purposes of this section convictions are related if they are convictions of the same person by the same court on the same day.
- (6) On a reference under this section the Crown Court may not award any punishment more severe than that awarded by the court whose decision is referred.
- (7) The Crown Court may grant bail to a person whose conviction or sentence has been referred under this section; and any time during which he is released on bail shall not count as part of any term of imprisonment or detention under his sentence.

## **12 Cases dealt with summarily in Northern Ireland**

- (1) Where a person has been convicted of an offence by a magistrates' court in Northern Ireland, the Commission—
  - (a) may at any time refer the conviction to a county court, and
  - (b) (whether or not they refer the conviction) may at any time refer to a county court any sentence imposed on, or in subsequent proceedings relating to, the conviction.
- (2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under Article 140(1) of the Magistrates' Courts (Northern Ireland) Order 1981 against the conviction (whether or not he pleaded guilty).
- (3) A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction shall be treated for all purposes as an appeal by the person under Article 140(1) of the Magistrates' Courts (Northern Ireland) Order 1981 against—
  - (a) the sentence, and
  - (b) any other sentence imposed on, or in subsequent proceedings relating to, the conviction or any related conviction.
- (4) On a reference under subsection (1) of a person's conviction the Commission may give notice to the county court that any related conviction which is specified in the notice is to be treated as referred to the county court under subsection (1).
- (5) For the purposes of this section convictions are related if they are convictions of the same person by the same court on the same day.
- (6) On a reference under this section a county court may not award any punishment more severe than that awarded by the court whose decision is referred.
- (7) The High Court may grant bail to a person whose conviction or sentence has been referred to a county court under this section; and any time during which he is released on bail shall not count as part of any term of imprisonment or detention under his sentence.

### **13 Conditions for making of references**

- (1) A reference of a conviction, verdict, finding or sentence shall not be made under any of sections 9 to 12 unless—
  - (a) the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made,
  - (b) the Commission so consider—
    - (i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, or
    - (ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and
  - (c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.
- (2) Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it.

### **14 Further provisions about references**

- (1) A reference of a conviction, verdict, finding or sentence may be made under any of sections 9 to 12 either after an application has been made by or on behalf of the person to whom it relates or without an application having been so made.
- (2) In considering whether to make a reference of a conviction, verdict, finding or sentence under any of sections 9 to 12 the Commission shall have regard to—
  - (a) any application or representations made to the Commission by or on behalf of the person to whom it relates,
  - (b) any other representations made to the Commission in relation to it, and
  - (c) any other matters which appear to the Commission to be relevant.
- (3) In considering whether to make a reference under section 9 or 10 the Commission may at any time refer any point on which they desire the assistance of the Court of Appeal to that Court for the Court's opinion on it; and on a reference under this subsection the Court of Appeal shall consider the point referred and furnish the Commission with the Court's opinion on the point.
- (4) Where the Commission make a reference under any of sections 9 to 12 the Commission shall—
  - (a) give to the court to which the reference is made a statement of the Commission's reasons for making the reference, and
  - (b) send a copy of the statement to every person who appears to the Commission to be likely to be a party to any proceedings on the appeal arising from the reference.
- (5) Where a reference under any of sections 9 to 12 is treated as an appeal against any conviction, verdict, finding or sentence, the appeal may be on any ground relating to the conviction, verdict, finding or sentence (whether or not the ground is related to any reason given by the Commission for making the reference).
- (6) In every case in which—

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- (a) an application has been made to the Commission by or on behalf of any person for the reference under any of sections 9 to 12 of any conviction, verdict, finding or sentence, but
  - (b) the Commission decide not to make a reference of the conviction, verdict, finding or sentence,
- the Commission shall give a statement of the reasons for their decision to the person who made the application.

### *Investigations and assistance*

## **15 Investigations for Court of Appeal**

- (1) Where a direction is given by the Court of Appeal under section 23A(1) of the 1968 Act or section 25A(1) of the 1980 Act the Commission shall investigate the matter specified in the direction in such manner as the Commission think fit.
- (2) Where, in investigating a matter specified in such a direction, it appears to the Commission that—
  - (a) another matter (a “related matter”) which is relevant to the determination of the case by the Court of Appeal ought, if possible, to be resolved before the case is determined by that Court, and
  - (b) an investigation of the related matter is likely to result in the Court’s being able to resolve it,
 the Commission may also investigate the related matter.
- (3) The Commission shall—
  - (a) keep the Court of Appeal informed as to the progress of the investigation of any matter specified in a direction under section 23A(1) of the 1968 Act or section 25A(1) of the 1980 Act, and
  - (b) if they decide to investigate any related matter, notify the Court of Appeal of their decision and keep the Court informed as to the progress of the investigation.
- (4) The Commission shall report to the Court of Appeal on the investigation of any matter specified in a direction under section 23A(1) of the 1968 Act or section 25A(1) of the 1980 Act when—
  - (a) they complete the investigation of that matter and of any related matter investigated by them, or
  - (b) they are directed to do so by the Court of Appeal,
 whichever happens first.
- (5) A report under subsection (4) shall include details of any inquiries made by or for the Commission in the investigation of the matter specified in the direction or any related matter investigated by them.
- (6) Such a report shall be accompanied—
  - (a) by any statements and opinions received by the Commission in the investigation of the matter specified in the direction or any related matter investigated by them, and
  - (b) subject to subsection (7), by any reports so received.

- (7) Such a report need not be accompanied by any reports submitted to the Commission under section 20(6) by an investigating officer.

## **16 Assistance in connection with prerogative of mercy**

- (1) Where the Secretary of State refers to the Commission any matter which arises in the consideration of whether to recommend the exercise of Her Majesty's prerogative of mercy in relation to a conviction and on which he desires their assistance, the Commission shall—
- (a) consider the matter referred, and
  - (b) give to the Secretary of State a statement of their conclusions on it;
- and the Secretary of State shall, in considering whether so to recommend, treat the Commission's statement as conclusive of the matter referred.
- (2) Where in any case the Commission are of the opinion that the Secretary of State should consider whether to recommend the exercise of Her Majesty's prerogative of mercy in relation to the case they shall give him the reasons for their opinion.

### *Supplementary powers*

## **17 Power to obtain documents etc**

- (1) This section applies where the Commission believe that a person serving in a public body has possession or control of a document or other material which may assist the Commission in the exercise of any of their functions.
- (2) Where it is reasonable to do so, the Commission may require the person who is the appropriate person in relation to the public body—
- (a) to produce the document or other material to the Commission or to give the Commission access to it, and
  - (b) to allow the Commission to take away the document or other material or to make and take away a copy of it in such form as they think appropriate,
- and may direct that person that the document or other material must not be destroyed, damaged or altered before the direction is withdrawn by the Commission.
- (3) The documents and other material covered by this section include, in particular, any document or other material obtained or created during any investigation or proceedings relating to—
- (a) the case in relation to which the Commission's function is being or may be exercised, or
  - (b) any other case which may be in any way connected with that case (whether or not any function of the Commission could be exercised in relation to that other case).
- (4) The duty to comply with a requirement under this section is not affected by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to it to the Commission.

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## **18 Government documents etc. relating to current or old cases**

- (1) Section 17 does not apply to any document or other material in the possession or control of a person serving in a government department if the document or other material—
- (a) is relevant to a case to which this subsection applies, and
  - (b) is in the possession or control of the person in consequence of the Secretary of State's consideration of the case.
- (2) Subsection (1) applies to a case if the Secretary of State—
- (a) is, immediately before the day on which the repeal by this Act of section 17 of the 1968 Act or of section 14 of the 1980 Act comes into force, considering the case with a view to deciding whether to make a reference under that section or whether to recommend the exercise of Her Majesty's prerogative of mercy in relation to a conviction by a magistrates' court, or
  - (b) has at any earlier time considered the case with a view to deciding whether to make such a reference or whether so to recommend.
- (3) The Secretary of State shall give to the Commission any document or other material which—
- (a) contains representations made to him in relation to any case to which this subsection applies, or
  - (b) was received by him in connection with any such case otherwise than from a person serving in a government department,
- and may give to the Commission any document or other material which is relevant to any such case but does not fall within paragraph (a) or (b).
- (4) Subsection (3) applies to a case if—
- (a) the Secretary of State is, immediately before the day on which the repeal by this Act of section 17 of the 1968 Act or of section 14 of the 1980 Act comes into force, considering the case with a view to deciding whether to make a reference under that section or whether to recommend the exercise of Her Majesty's prerogative of mercy in relation to a conviction by a magistrates' court, or
  - (b) the Secretary of State has at any earlier time considered the case with a view to deciding whether to make such a reference, or whether so to recommend, and the Commission at any time notify him that they wish subsection (3) to apply to the case.

## **19 Power to require appointment of investigating officers**

- (1) Where the Commission believe that inquiries should be made for assisting them in the exercise of any of their functions in relation to any case they may require the appointment of an investigating officer to carry out the inquiries.
- (2) Where any offence to which the case relates was investigated by persons serving in a public body, a requirement under this section may be imposed—
- (a) on the person who is the appropriate person in relation to the public body, or
  - (b) where the public body has ceased to exist, on any chief officer of police or on the person who is the appropriate person in relation to any public body which appears to the Commission to have functions which consist of or include functions similar to any of those of the public body which has ceased to exist.



- (3) Where no offence to which the case relates was investigated by persons serving in a public body, a requirement under this section may be imposed on any chief officer of police.
- (4) A requirement under this section imposed on a chief officer of police may be—
  - (a) a requirement to appoint a person serving in the police force in relation to which he is the chief officer of police, or
  - (b) a requirement to appoint a person serving in another police force selected by the chief officer.
- (5) A requirement under this section imposed on a person who is the appropriate person in relation to a public body other than a police force may be—
  - (a) a requirement to appoint a person serving in the public body, or
  - (b) a requirement to appoint a person serving in a police force, or in a public body (other than a police force) having functions which consist of or include the investigation of offences, selected by the appropriate person.
- (6) The Commission may direct—
  - (a) that a person shall not be appointed, or
  - (b) that a police force or other public body shall not be selected,under subsection (4) or (5) without the approval of the Commission.
- (7) Where an appointment is made under this section by the person who is the appropriate person in relation to any public body, that person shall inform the Commission of the appointment; and if the Commission are not satisfied with the person appointed they may direct that—
  - (a) the person who is the appropriate person in relation to the public body shall, as soon as is reasonably practicable, select another person in his place and notify the Commission of the proposal to appoint the other person, and
  - (b) the other person shall not be appointed without the approval of the Commission.

## **20 Inquiries by investigating officers**

- (1) A person appointed as the investigating officer in relation to a case shall undertake such inquiries as the Commission may from time to time reasonably direct him to undertake in relation to the case.
- (2) A person appointed as an investigating officer shall be permitted to act as such by the person who is the appropriate person in relation to the public body in which he is serving.
- (3) Where the chief officer of an England and Wales police force appoints a member of the Royal Ulster Constabulary as an investigating officer, the member appointed shall have in England and Wales the same powers and privileges as a member of the police force has there as a constable; and where the Chief Constable of the Royal Ulster Constabulary appoints a member of an England and Wales police force as an investigating officer, the member appointed shall have in Northern Ireland the same powers and privileges as a member of the Royal Ulster Constabulary has there as a constable.
- (4) The Commission may take any steps which they consider appropriate for supervising the undertaking of inquiries by an investigating officer.

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- (5) The Commission may at any time direct that a person appointed as the investigating officer in relation to a case shall cease to act as such; but the making of such a direction shall not prevent the Commission from imposing a requirement under section 19 to appoint another investigating officer in relation to the case.
- (6) When a person appointed as the investigating officer in relation to a case has completed the inquiries which he has been directed by the Commission to undertake in relation to the case, he shall—
  - (a) prepare a report of his findings,
  - (b) submit it to the Commission, and
  - (c) send a copy of it to the person by whom he was appointed.
- (7) When a person appointed as the investigating officer in relation to a case submits to the Commission a report of his findings he shall also submit to them any statements, opinions and reports received by him in connection with the inquiries which he was directed to undertake in relation to the case.

## 21 Other powers

Sections 17 to 20 are without prejudice to the taking by the Commission of any steps which they consider appropriate for assisting them in the exercise of any of their functions including, in particular—

- (a) undertaking, or arranging for others to undertake, inquiries, and
- (b) obtaining, or arranging for others to obtain, statements, opinions and reports.

## 22 Meaning of “public body” etc

- (1) In sections 17, 19 and 20 and this section “public body” means—
  - (a) any police force,
  - (b) any government department, local authority or other body constituted for purposes of the public service, local government or the administration of justice, or
  - (c) any other body whose members are appointed by Her Majesty, any Minister or any government department or whose revenues consist wholly or mainly of money provided by Parliament or appropriated by Measure of the Northern Ireland Assembly.
- (2) In sections 19 and 20 and this section—
  - (a) “police force” includes the Royal Ulster Constabulary and the Royal Ulster Constabulary Reserve and any body of constables maintained otherwise than by a police authority,
  - (b) references to the chief officer of police, in relation to the Royal Ulster Constabulary and the Royal Ulster Constabulary Reserve, are to the Chief Constable of the Constabulary and, in relation to a police force maintained otherwise than by a police authority, are to the chief constable, and
  - (c) references to an England and Wales police force are to a police force maintained under section 2 of the Police Act 1964, the metropolitan police force or the City of London police force.
- (3) In section 18 and this section—

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- (a) references to a government department include a Northern Ireland department and the Office of the Director of Public Prosecutions for Northern Ireland, and
  - (b) “Minister” means a Minister of the Crown as defined by section 8 of the Ministers of the Crown Act 1975 but also includes the head of a Northern Ireland department.
- (4) In sections 17, 19 and 20 “the appropriate person” means—
- (a) in relation to a police force, the chief officer of police,
  - (b) in relation to the Crown Prosecution Service, the Director of Public Prosecutions,
  - (c) in relation to the Office of the Director of Public Prosecutions for Northern Ireland, that Director,
  - (d) in relation to the Serious Fraud Office, the Director of the Serious Fraud Office,
  - (e) in relation to the Inland Revenue, the Commissioners of Inland Revenue,
  - (f) in relation to the Customs and Excise, the Commissioners of Customs and Excise,
  - (g) in relation to any government department not within any of the preceding paragraphs, the Minister in charge of the department, and
  - (h) in relation to any public body not within any of the preceding paragraphs, the public body itself (if it is a body corporate) or the person in charge of the public body (if it is not).
- (5) For the purposes of sections 17, 19 and 20—
- (a) a justices' chief executive or justices' clerk appointed by, or a member of the staff of, a magistrates' courts committee shall be treated as serving in the committee, and
  - (b) a person authorised under section 57 of the Northern Ireland (Emergency Provisions) Act 1991 to exercise the powers conferred by Schedule 5 to that Act shall be treated as if he were serving in a public body and he were the appropriate person in relation to the body.

### *Disclosure of information*

## **23 Offence of disclosure**

- (1) A person who is or has been a member or employee of the Commission shall not disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure of the information is excepted from this section by section 24.
- (2) A person who is or has been an investigating officer shall not disclose any information obtained by him in his inquiries unless the disclosure of the information is excepted from this section by section 24.
- (3) A member of the Commission shall not authorise—
  - (a) the disclosure by an employee of the Commission of any information obtained by the Commission in the exercise of any of their functions, or
  - (b) the disclosure by an investigating officer of any information obtained by him in his inquiries,

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unless the authorisation of the disclosure of the information is excepted from this section by section 24.

- (4) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

## **24 Exceptions from obligations of non-disclosure**

- (1) The disclosure of information, or the authorisation of the disclosure of information, is excepted from section 23 by this section if the information is disclosed, or is authorised to be disclosed—
- (a) for the purposes of any criminal, disciplinary or civil proceedings,
  - (b) in order to assist in dealing with an application made to the Secretary of State for compensation for a miscarriage of justice,
  - (c) by a person who is a member or an employee of the Commission either to another person who is a member or an employee of the Commission or to an investigating officer,
  - (d) by an investigating officer to a member or an employee of the Commission,
  - (e) in any statement or report required by this Act,
  - (f) in or in connection with the exercise of any function under this Act, or
  - (g) in any circumstances in which the disclosure of information is permitted by an order made by the Secretary of State.
- (2) The disclosure of information is also excepted from section 23 by this section if the information is disclosed by an employee of the Commission, or an investigating officer, who is authorised to disclose the information by a member of the Commission.
- (3) The disclosure of information, or the authorisation of the disclosure of information, is also excepted from section 23 by this section if the information is disclosed, or is authorised to be disclosed, for the purposes of—
- (a) the investigation of an offence, or
  - (b) deciding whether to prosecute a person for an offence,
- unless the disclosure is or would be prevented by an obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) arising otherwise than under that section.
- (4) Where the disclosure of information is excepted from section 23 by subsection (1) or (2), the disclosure of the information is not prevented by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) arising otherwise than under that section.
- (5) The power to make an order under subsection (1)(g) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **25 Consent to disclosure**

- (1) Where a person on whom a requirement is imposed under section 17 notifies the Commission that any information contained in any document or other material to which the requirement relates is not to be disclosed by the Commission without his prior consent, the Commission shall not disclose the information without such consent.

- (2) Such consent may not be withheld unless—
  - (a) (apart from section 17) the person would have been prevented by any obligation of secrecy or other limitation on disclosure from disclosing the information to the Commission, and
  - (b) it is reasonable for the person to withhold his consent to disclosure of the information by the Commission.
- (3) An obligation of secrecy or other limitation on disclosure which applies to a person only where disclosure is not authorised by another person shall not be taken for the purposes of subsection (2)(a) to prevent the disclosure by the person of information to the Commission unless—
  - (a) reasonable steps have been taken to obtain the authorisation of the other person, or
  - (b) such authorisation could not reasonably be expected to be obtained.